APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-749

PFIZER INC., AMERICAN CYANAMID COMPANY, BRISTOL-MYERS COMPANY, SQUIBB CORPORATION, OLIN CORPORATION and THE UPJOHN COMPANY,
Petitioners,

—against—

THE GOVERNMENT OF INDIA, THE IMPERIAL GOVERNMENT OF IRAN, THE REPUBLIC OF THE PHILIPPINES and THE REPUBLIC OF VIETNAM,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 1, 1976
CERTIORARI GRANTED APRIL 18, 1977

CONTENTS OF APPENDICES

NOTE: The Following Items Are Printed in the **Appendix to the Petition for Certiorari** ("Pet. App.") and Are Not Reproduced in This Appendix.

INDEX TO THIS APPENDIX

RELEVANT DOCKET ENTRIES

COURT OF APPEALS

DATE	PROCEEDINGS
1/ 7/76	Petition for permission to appeal pursuant to 28 U.S.C. §1292(b).
1/15/76	Opposition to petition for permission to appeal pursuant to 28 U.S.C. §1292(b).
1/19/76	Answer of respondent Republic of Philippines to petition for permission to appeal.
1/22/76	Docketing case.
1/22/76	Order: Petition to take interlocutory appeal is granted; clerk directed to regularly docket this appeal.
2/11/76	Mo U.S. for lv to participate in o/a as amicus curiae. [Handwritten] use briefs in 74-1680, 74-1847, 74-1870.
2/26/76	Order: Counsel for the U.S. granted ten minutes oral argument as amicus curiae; counsel for appellants may have additional five minutes to respond.
3/ 1/76	Appearance for United States as amicus curiae.
3/11/76	Argued & submitted before Judges Lay, Ross & Stephenson; for appellant Samuel W. Murphy, Jr.; for appellee Philippines, Douglas Rigler; for appellee India, Julius Kaplan; for appellee Iran, Harold C. Petrowitz; for amicus U.S., Catherine G. O'Sullivan, Justice Dept.; conclusion by Mr. Murphy; recorded—
5/19/76	Opinion by Judge Lay (Published) concur Ross.
5/19/76	Judgment: Judgment of district court is affirmed.
6/ 2/76	Petition for rehearing en banc and rehearing (appellants).

Relevant Docket Entries

DATE	PROCEEDINGS
6/24/76	Order: Petition for rehearing with suggestions for rehearing en banc is granted; clerk directed to schedule case for oral argument and submission to court en banc at session to be held in St. Louis, Missouri, in September 1976. (to be St. Paul 8-17).
7/26/76	Mo of U.S. for lv to participate in o/a as amicus curiae at en banc hearing.
7/27/76	Order: Amicus curiae U.S. granted leave to make oral argument; amicus allowed fifteen minutes for oral argument.
8/ 2/76	Mo appellants for additional argument time to respond to amicus curiae.
8/ 5/76	Order: Counsel for appellants may have ten additional minutes to make oral argument responsive to the oral argument of amicus curiae U.S.
8/ 6/76	[Oral Argument] Transferred to 8-17-76 session. St. Paul.
8/17/76	Supplemental response of U.S. as amicus curiae.
8/17/76	Argued and submitted to the Court En Banc: Gibson, Lay, Heaney, Bright, Ross, Stephenson, Webster, Henley. Samuel W. Murphy, Jr. for appellant. Douglas V. Rigler for Philippines; Julius Kaplan for India; Harold Petrowitz for Iran. Catherine O'Sullivan, Dept. of Justice for amicus United States. Concluded by Mr. Murphy. Recorded.
9/ 3/76	Per curiam opinion; dissenting opinion by Judges Bright & Henley (Printed, Published)
9/ 3/76	Judgment: Judgment of district court is affirmed.

Relevant Docket Entries

DATE	PROCEEDINGS
9/21/76	Mo appellants for stay of mandate.
10/ 5/76	Order: Appellants' motion for stay of mandate is denied.
10/ 7/76	Mandate issued.
10/14/76	Receipt for mandate.
12/ 6/76	Notice of filing of petition for writ of certiorari to the Supreme Ct. as Case No. 76-749, (as of 12/1/76).

DISTRICT COURT

2/10/70	Complaint, appearance. Jury demanded. (70 C. 299 (N.D. Ill.))—Vietnam
3/ 5/70	Filed letter and order of Multidistrict Litigation Panel requesting transfer of Northern Dist. of Ill. Case No. 70 C. 299 to SDNY for pretrial coordinated hearings.—Viet-Nam
3/20/70	Filed Answer of American Cyanamid Co. in 70 Civ. 877.—Viet-Nam
4/23/70	Filed Answer of The Upjohn Co. in 70 Civ. 877 —Viet-Nam
4/24/70	Filed Answer of Olin Corp. (Squibb) 70 Civ. 877—Viet-Nam
4/24/70	Filed Answer of Chas. Pfizer & Co. Inc. to Complaint in 70 Civ. 877—Viet-Nam
3/22/71	Filed Notice of Motion re: dismiss complaint of Republic of Viet-Nam in 70 Civ. 877—Viet-Nam
8/17/71	Filed order of transfer from Southern District of New York; Administrative Order No. 71-12,

DATE	PROCEEDINGS
	Filed in Southern District of New York on August 6, 1971—Viet-Nam
4/ 4/72	Complaint, appearance. Jury Demanded.—Philippines
5/25/72	Re: Republic of the Philippines v. Chas. Pfizer & Co. (D.C. No. 650-72) Filed Order, transferring above case to District of Minnesota. D. Minn. No. 4-72 Civ. 312.—Philippines
5/30/72	Re: Republic of the Philippines et al. v. Pfizer Inc., et al. Filed Answer of American Cyanamid Co. to complaint of plaintiff praying for dismissal of complaint with affidavit of service by mail on May 26, 1972 attached.—Philippines
5/31/72	Re: Republic of the Philippines v. Pfizer. Filed Answer of the Upjohn Company in the above suit with attached affidavit of service by mail on May 26, 1972.—Philippines
6/ 2/72	Re: Republic of Philippines v. Chas. Pfizer, Inc. et al. Filed Answer of Deft. Bristol-Myers Co. with afft. of service by mail on May 26, 1972 attached.—Philippines
6/21/72	Filed Motion to bring the Philippines Action within the purview of Misc. Order 71-13, or to bring certain defenses on promptly for preliminary hearing & determination as provided by Rule 12(d) or to strike certain of the defts affirmative defenses and accompanying Memorandum with attached cert. of service.—Philippines
11/ 3/72	Entered record of pretrial conference, Nov. 1, 1972, Mpls.—All Actions

DATE	PROCEEDINGS
12/17/73	Filed Motion to Amend Complaint (4-72 Civil 312 Philippines) ([proposed] Amended Complaint attached) Afft. of Service.—Philippines
1/14/74	Filed Motion to Amend Complaint, and Memorandum in Support Thereof. Afft. of Service for this & next document. (4-71 Civ. 402)—Viet-Nam
1/14/74	Filed [Proposed] Amended Complaint. (4-71 Civ. 402)—Viet-Nam
1/14/74	Filed Motion to Further Amend Complaint. [Proposed] further amendments attd. Afft. of Service. (4-72 Civ. 312)—Philippines
1/17/74	Filed Miscellaneous Order No. 74-31. Memorandum Opinion and Order Striking affirmative defenses relating to standing of Philippines and authority of Central Bank of the Philippines to maintain this action. (4-72 Civil 312)—Philippines
2/ 5/74	Filed Complaint, with jury trial demanded.—Iran
2/ 6/74	Received File on Case No. Civil 4-74-65, Imperial Government of Iran v. Pfizer, et al. (Transferred from Hon. E. Larson).—Iran
2/25/74	Filed Miscellaneous Order 74-32. Granting Leave to Amend Complaints in the following actions: 4-71 Civ. 6, 403, 413; 4-72 Civ. 312; 70 Civ. 180, 1605 (SDNY). (Served by Clerk on J. Cochrane, P. Dorsey, R. Seefried)—Philippines
3/18/74	Filed Answer of the Upjohn Company. Afft. of Service. (4-74-65)—Iran.
3/18/74	Filed Answer of Defendants Olin Corporation, Squibb, Inc. & E. R. Squibb & Sons, Inc. Afft. of Service. (4-74-65)—Iran

Relevant Docket Entries

DATE	PROCEEDINGS
3/20/74	Filed Answer [of Bristol] (4-74-65, Iran). Afft. of Service.—Iran
3/21/74	Filed Answer of American Cyanamid Company. Jury Trial Demanded. (4-74-65, Iran). Cert. of Service.—Iran
3/28/74	Filed Notice that Plaintiff is Filing an Amended Complaint. (4-71 Civ. 402)—Viet-Nam
3/28/74	Filed Amended Complaint. Jury Trial Demanded. (4-71 Civ. 402, Viet-Nam). Afft. of Service for this and preceding document.—Viet-Nam
3/28/74	Filed Plaintiff's Motion to Consolidate. [Proposed Order attached] Cert. of Service. (4-74-65, Iran)
4/ 1/74	Filed Miscellaneous Order 74-33. (Granting leave to file Amended Complaint). (4-71 Civ. 402. Viet-Nam) (Served by Clerk on P. Dorsey, R. Seefried, J. Cochrane).—Viet-Nam
4/ 3/74	Filed Amended Complaint. (4-72 Civ. 312, Philippines) [Further Amendment Attached] Afft. of Service.—Philippines
4/ 3/74	Filed Motion to File a Further Amendment to Plaintiff's Complaint. [Proposed Further Amended Attached] Afft. of Service. (4-71 Civ. 402)—Viet-Nam
4/ 9/74	Filed Answer of American Cyanamid Company to Amended Complaint. Jury Trial Demanded. Cert. of Service. (4-71 Civ. 402, Viet-Nam)
4/10/74	Filed Answer of Pfizer Inc. to Amended Complaint. Cert. of Service. (4-71 Civ. 402) Viet-Nam. Jury Trial Demanded

Relevant Docket Entries

DATE	PROCEEDINGS
4/24/74	Filed Answer of Pfizer Inc. to Amended Complaint. Cert. of Service. (4-72 Civ. 312) Philippines. Jury Trial Demanded
4/25/74	Filed Answer of Defendants Olin Corporation, Squibb, Inc., and E. R. Squibb and Sons, Inc. to the "Amended Complaint and Further Amendment to Complaint" Afft. of Service.—Philippines
4/25/74	Filed Answer [of Bristol-Myers Company to Amended Complaint]. Afft. of Service.—Philippines.
4/25/74	Filed Answer of the Upjohn Company to the Amended Complaint. Cert. of Service.—Philippines.
4/26/74	Filed Answer of American Cyanamid Company to Amended Complaint. Jury Trial Demanded. Afft. of Service.—Philippines
6/26/74	Filed Request for Certification by defendants in cases The Republic of Vietnam v. Pfizer, et al. No. 4-71 Civ. 402; The Imperial Government of Iran v. Pfizer Inc., et al. No. 4-74 Civ. 65; and The Republic of the Philippines, etc. v. Pfizer Inc., No. 4-72 Civ. 312, by the Court of its Miscellaneous Order 73-31 dated January 16, 1974 and Miscellaneous Order 73-37, dated June 17, 1974, with Aff. of Serv. by mail on 6/25/74 attached.—Iran, Viet-Nam, Philippines
9/ 5/74	Filed Miscellaneous Order 74-39. [Denying request for certification of Miscellaneous Order 74-31] (4-71 Civ. 435, 4-71 Civ. 402, 4-72 Civ. 312, Civ. 4-74-65) (Served on P. Owens, R. Johnson, P. Dorsey, R. Seefried)—Viet-Nam, Philippines, Iran

DATE	PROCEEDINGS
10/11/74	Filed Complaint.—India, Civ. 4-74-496.
10/15/74	Filed Order of Direction to Clerk of Court assigning case no. Civil 4-74-496 to Judge Miles W. Lord. (Served: R. Johnson, P. Owens, R. Seefried, P. Dorsey, L. Velvel) (Comp. to: 4-71 Civ. 435)—India
10/17/74	Filed Notice of Motion [to dismiss]. Supporting Afft. of Peter Dorsey. Exhibit. Cert. of Service.—India
10/17/74	Received file of companion case, Civ. 4-74-496, *The Government of India* v. *Pfizer, Inc., et al.*
10/21/74	Filed Motion to Consolidate [pursuant to Rule 42] (4-74-496) Cert. of Service.—India
10/23/74	Filed transcript of proceedings of October 22, 1974. All Actions. (Breviu, Kunde, Triden—R)
10/29/74	Related case filed; *Federal Republic of Germany* v. *Pfizer et al.* (See case file Civ. 4-74-614).—Germany
9/ 8/75	Filed Answer of American Cyanamid Company to Complaint. Jury Trial Demanded. Cert. of Serv.—India
9/ 9/75	Filed Answer of Bristol-Myers Company to Complaint. Jury Trial Demanded. Cert. of Serv.—India
9/16/75	Filed Answer of Defendants Olin Corporation, Squibb, Inc., and E. R. Squibb and Sons, Inc. Cert. of Serv.—India
9/18/75	Filed Answer of The Upjohn Company. Jury Trial Demanded. Cert. of Serv.
9/24/75	Filed ent copy Opinion from U.S. Court of Appeals for the Eighth Circuit (denying petition

DATE	PROCEEDINGS
	for writ of mandamus; reversing district court's permitting govts to proceed in official representative or parens patriae capacities; remanding cause to district court with directions to dismiss that count of pltfs complaints for failure to state proper claim for relief.) (Their case Nos. 74-1680, 74-1847 and 74-1870, 8/27/75) (Served: P. Owens, R. Johnson, P. Dorsey, R. Cahn) (Dist. Ct. Nos. Mis. 74-31; 4-71-402; 4-74-65; 4-72-312 and Civ. 4-74-496 per cover letter)
9/24/75	Filed ent Certified Copy of Judgment from U.S. Court of Appeals for the Eighth Circuit (. . . "it is now here ordered and adjudged by this Court that the petition for writ of mandamus be and is hereby denied. And it is further ordered by this Court that the order of the District Court permitting the governments to proceed in their official representative or parens patriae capacities is reversed. And it is further ordered by this Court that the order of the District Court permitting the governments to proceed in their official representative or parens patriae capacities is reversed. And it is further ordered by this Court that this cause be and is hereby remanded to the said District Court with directions to dismiss that count of plaintiffs' complaints for failure to state a proper claim for relief." 8/27/75. Order ent in accordance with opinion Clerk, USCA, 8th Cir. 9/22/75. Their case Nos. 74-1680, 74-1847 and 74-1870) (Served: P. Owens, R. Johnson, P. Dorsey, R. Cahn)
10/22/75	Filed Notice of Motion (by dfts for an order per 28 USC §1404(a) transferring captioned actns to D.C. D.C.) Affidavit of Samuel W. Murphy, Jr. Memorandum in Support of Defendants'

DATE	PROCEEDINGS
	Motion to Transfer these Actions to the District of Columbia. Cert. of Serv. (AA; 4-71 Civ. 402, 4-72 Civ. 312, 4-74 Civ. 65, 4-74-Civ. 614. Also 4-74-496)—Viet-Nam, Philippines, Iran, Germany, India
10/24/75	Filed ent Order (Lord, J., 10/24/75; Ordered that paragraphs 10 and 11 of the complaint in 4-71 Civ. 402 are dismissed for failure to state proper claim for relief and that paragraphs 10 and 11 of complaint in Civ. 4-74-65 are dismissed for failure to state proper claim for relief.) (AA; 4-71 Civ. 402; Civ. 4-74-65) (P. Owens, R. Johnson, P. Dorsey, R. Cahn).—Viet-Nam, Iran
11/26/75	Filed Order (that Order of 10/24/75 is amended nunc pro tunc so as to dismiss paragraphs 10 and 11 of amended complaint in 4-71 Civ. 402, ¶ 10 and 11 of complaint in Civ. 4-74-65, and ¶ 10 and 11 of Complaint in Civ. 4-74-496 for failure to state proper claim for relief. Lord, J., 11/26/75) (AA; 4-71 Civ. 402; Civ. 4-74-65, and also comp. case Civ. 4-74-496) (copies: P. Dorsey, P. Owens, R. Johnson, R. Cahn) ent—Viet-Nam, Iran, India
12/29/75—	Filed in Civ. 4-74-496 as document #19: Miscellaneous Order No. 75-48. (Lord, J., 12/27/75. Dfts mtn to dismiss fld 10/17/74 [in Civ. 4-74-496] is denied; this Ct. of opinion that this order involves controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal from this order may materially advance ultimate termination of this litigation) (4-71 Civ. 435; Civ. 4-74-496 also) (J. Kaplan, P. Owens, P. Dorsey, R. Cahn, R. Johnson)

DATE	PROCEEDINGS
12/29/75	Filed ent Miscellaneous Order No. 75-49 (Lord, J., 12/27/75. Pltfs Vietnam and Iran are "persons" within meaning of §4 Clayton Act and thus entitled to bring these actions; therefore, to extent consistent with this order, dfts mtn to dismiss Vietnam dated 3/12/71 is denied and dfts' affirmative defenses in Vietnam and Iran are striken. Miscellaneous Order 74-31 dated 1/16/74 is amended to include following language: "This Court is of the opinion that this order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this order may materially advance the ultimate termination of this litigation," and This Court is of the opinion that this order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this order may materially advance the ultimate termination of this litigation.) (4-71 Civ. 435; 4-71 Civ. 402; 4-72 Civ. 312; and Civ. 4-74-65) (P. Owens, R. Johnson, P. Dorsey, R. Cahn)
7/23/76	Motion of the Government of Korea to withdraw and for an Order dismissing its complaint; together with points and authorities in support of its motion; proposed Order; and Certificate of Service by mail on 7/13/76 attached.
10/12/76	Opinion from U.S. Court of Appeals for the Eighth Circuit affirming the District Court. (Copies to Counsel: P. Owens, P. Sprenger, P. Dorsey, R. Cahn, H. Petrowitz) (Re: No. 76-1064)
10/12/76	Judgment from U.S. Court of Appeals for the Eighth Circuit affirming the District Court. (Copies to Counsel: P. Owens, P. Sprenger, P. Dorsey, R. Cahn, H. Petrowitz) (Re: No. 76-1064)

Relevant Docket Entries

DATE	PROCEEDINGS
10/27/76	Order (Lord, J., 10/27/76: Ordered that having considered plaintiff's motion to dismiss the above-captioned action and having considered the lack of opposition thereto this Court has determined that such request should be granted and it is hereby, Ordered that the above captioned action by the Government of Korea is hereby dismissed) (4-71 Civ. 435; Civ. 4-76-48) (Served: R. Cahn, P. Owens, P. Sprenger, P. Dorsey, J. Kaplan)—Korea
12/ 2/76	ORDER (Lord, J. 12/2/76, Ordered: That this action [Republic of Vietnam v. Pfizer, Inc., American Cyanamid Company, Bristol-Myers Company, Squibb Inc., E. R. Squibb & Sons, Inc., Olin Corporation and The Upjohn Co.] is dismissed with prejudice and without cost to either party) (AA; 4-71 Civ. 402) (served: P. Owens, P. Sprenger, P. Dorsey, J. Kaplan, R. Cahn)—Viet-Nam
12/ 2/76	JUDGMENT That this action is dismissed with prejudice and without costs to either party. (4-71 Civ. 435; 4-71 Civ. 402)—Viet-Nam.
2/27/76	Notice of Appeal (Notice is hereby given that the Republic of Vietnam, plaintiff above named, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the order of this Court dismissing the above action with prejudice and without cost to either party entered in this action on the second day of December, 1976.) (Mailed copies: R. Cahn, P. Owens, P. Sprenger, P. Dorsey, J. Kaplan) (Mailed certified copy of Notice of Appeal together with two certified copies of the docket entries to Clerk, U.S. Court of Appeals, St. Louis, MO 63101) (4-71 Civ. 435; 4-71 Civ. 402)—Viet-Nam.

Defendants' Notice of Motion to Dismiss Complaint of the Republic of Vietnam, March 12, 1971.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

M 19-93A
and the following action:
70 Civ. 877

In Re Coordinated Pretrial Proceeding in Antibiotic Antitrust Actions

THE REPUBLIC OF VIET-NAM,

Plaintiff,

v.

CHAS. PFIZER & CO., INC., et al.,

Defendants.

Notice of Motion

SIRS:

PLEASE TAKE NOTICE THAT on March 16, 1971 at 10:00 o'clock in the forenoon, at the United States Court House in San Francisco, or at such other time or place as may be fixed by the Court, the defendants upon the complaint, the attached affidavits and all prior proceedings herein will move the Court for an Order pursuant to Fed. R. Civ. P. 12(b)(6) dismissing the complaint of the Republic of Viet-Nam for failure to state a claim upon which relief can be granted on the ground that plaintiff

Notice of Motion

has no cause of action under Section 4 of the Clayton Act (15 U.S.C. § 15).

Dated: New York, New York
March 12, 1971

Respectfully submitted,

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Notice of Motion

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[Affidavit and exhibits omitted in printing.]

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District Court's Memorandum and Order, May 26, 1971, Denying Defendants' Motion to Dismiss the Action of the State of Kuwait.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

M-19-93A and the following action: 69 Civ. 4091

In Re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions

STATE OF KUWAIT, et al.

v.

CHAS. PFIZER & Co., et al.

MISCELLANEOUS ORDER NO. 71-13

MEMORANDUM AND ORDER DENYING DEFENDANTS' MOTION TO DISMISS

This action is one of more than sixty so-called non-settling antibiotic drug cases which have been assigned to the undersigned judge for coordinated or consolidated pretrial proceedings pursuant to section 1407. *In re Antibiotic Drug Cases*, 320 F. Supp. 586 (JPML 1971). It is brought by Kuwait, a foreign sovereign, seeking treble damages under section 4 of the Clayton Act, 15 U.S.C. § 15, resulting from its purchases of broad spectrum antibiotic drugs

manufactured and sold by the defendants. The defendants have moved to dismiss "for failure to state a claim upon which relief can be granted on the ground that the plaintiff, as a foreign sovereign government, has no cause of action under section 4 of the Clayton Act."[1] The issue, simply stated, is whether a foreign nation is a "person" within the meaning of our antitrust laws.[2]

While it may be simply stated, the question is of great importance and is apparently one of "first impression."[3] While the parties agree that Congressional intent controls, there is little of relevance to be garnered from the legislative history of the Sherman and Clayton Acts and no reported decision has been found which squarely faces this issue.

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1. A similar motion was filed in the *Republic of Viet Nam Case* but it raises additional issues not involved in this case, which will be dealt with separately. To the extent applicable, the Court's holding here will apply with equal force and effect to the *Viet Nam Case.*

2. 15 U.S.C. §§ 7 and 12.

3. The plaintiffs and the United States, as *amicus curiae,* contend that the Republic of India was allowed to maintain a treble damage action in the *Electrical Equipment Co. Cases.* It is true that the counsel for the defendants indicated that he had "the job of convincing the Court that India is not a person under the antitrust laws." (Transcript of June 18, 1963, p. 139). However, the "named plaintiff" was the Damodar Valley Corporation, an Indian corporation although the defendants argued that it wasn't a bona fide corporation but was "the Republic of India acting in the guise of a corporation." (Transcript, p. 144). The plaintiff's position was simply that since the Damodar Valley Corporation was a corporation organized and existing under Indian law, it was clearly a "person" under sections 7 and 12. (Transcript, p. 156). The basis for the Court's decision overruling defendants' motion to dismiss was not elucidated and cannot, under the circumstances, be relied on as authority for the plaintiff's position in this case.

All parties agree that the relevant case law is essentially limited to two Supreme Court decisions: *United States* v. *Cooper Corp.,* 312 U.S. 600 (1941) and *Georgia* v. *Evans,* 316 U.S. 159 (1942). In *Cooper,* the Supreme Court held that the United States could not maintain a treble damage action under the Sherman Act (thus leading Congress to amend the Act to allow the United States to sue for single damages) while in *Georgia,* the Court held that a state could recover treble damages under section 4 although it was not included in the statutory definition of persons entitled to maintain treble damage actions.[4]

The plaintiffs and the United States, as *amicus curiae,* argue that the rationale of *Georgia* should apply to foreign nations while the defendants argue that the *Cooper* decision is applicable to them. The plaintiffs rely on a long line of cases which allow foreign sovereigns to maintain actions in United States Courts. The United States, as *amicus,* argues persuasively that foreign nations, as a matter of good foreign policy, should be given the protection of our antitrust laws. But the real question, as this Court perceives it, is whether the maintenance of this action is essential to the effective enforcement of the antitrust laws. The Court believes that it is and the motion will be denied.

The decisions of the United States Supreme Court have consistently given vitality and strength to the private enforcement of our antitrust laws. As the Second Circuit

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4. The Sherman and Clayton Acts both define such person as including "any corporation and association existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country." 15 U.S.C. §§ 7 and 12.

recently pointed out "the most important thing to keep in mind is the *result orientation* with which the Court has approached the whole area of private treble-damage litigation." *State of West Virginia* v. *Chas. Pfizer & Co., Inc.*, —— F.2d —— (2d Cir. 1971) (Emphasis Added.)

A conspiracy among domestic producers of antibiotic drugs to reduce or eliminate competition as to foreign sales would certainly have an adverse effect on domestic competition. Not only would it enable the domestic manufacturers to build up a substantial "war chest" from excessive profits from foreign sales but it undoubtedly would prevent either a domestic or foreign manufacturer from entering into the foreign market in order to build up its strength to enter into the restricted domestic market. In an age of expanding world trade, a truly successful domestic monopoly requires control of the foreign market as well. For these reasons, this Court is convinced that the fundamental goal of the antitrust laws could be seriously frustrated by not permitting Kuwait to maintain a treble damage action for damages resulting from the alleged conspiracy.

As the Supreme Court could "perceive no reason for believing that Congress wanted to deprive a state, or purchaser of commodities shipped in interstate commerce, of the civil remedy of treble damages which is available to other (domestic) purchasers who suffer through violation of the Act," *Georgia* v. *Evans*, 316 U.S. at 162, this Court can perceive no reason for believing that Congress wanted to deprive a foreign nation, as purchaser of commodities shipped in foreign commerce, of the civil remedy of treble damages which is available to other foreign purchasers who suffer through violation of the Act.

IT IS THEREFORE ORDERED that defendants' motion to dismiss be and the same is hereby denied.

This Court is of the opinion that this order involves an important and controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this order may materially advance the ultimate termination of this litigation. 28 U.S.C. § 1292(b).

/s/ MILES W. LORD
Miles W. Lord
United States District Judge
Southern District of New York
By Assignment

Dated: May 24, 1971

Motion of Republic of the Philippines, June 19, 1972, to Strike Defendants' Affirmative Defense as to Foreign Governments' Lack of Standing to Sue For Treble-Damages Under the Antitrust Laws.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MINNESOTA

4-71 Civ. 435
In Re Coordinated Pretrial Proceedings
in Antibiotics Antitrust Actions

Dist. of Columbia Civil Action
No. 650-72

THE REPUBLIC OF THE PHILIPPINES
BY AND THROUGH THE CENTRAL BANK OF THE PHILIPPINES,
Plaintiff,

v.

PFIZER, INC.; AMERICAN CYANAMID COMPANY; BRISTOL-MYERS COMPANY; SQUIBB, INC.; E. R. SQUIBB AND SONS, INC.; OLIN CORP.; AND THE UPJOHN COMPANY,
Defendants.

MOTION TO BRING THE PHILIPPINES ACTION WITHIN THE PURVIEW OF MISCELLANEOUS ORDER 71-13, OR, ALTERNATIVELY TO BRING CERTAIN DEFENSES ON PROMPTLY FOR PRELIMINARY HEARING AND DETERMINATION AS PROVIDED BY RULE 12(d); OR, ALTERNATIVELY, TO STRIKE CERTAIN OF THE DEFENDANTS' AFFIRMATIVE DEFENSES.

Motion of Republic of the Philippines, June 19, 1972, to Strike Defendants' Affirmative Defenses as to Foreign Governments' Lack of Standing to Sue For Treble-Damages Under the Antitrust Laws.

Plaintiff moves this Court for an order declaring plaintiffs' action to be within the purview of Miscellaneous Order 71-13, which established that foreign governments have standing to bring suit under the applicable antitrust statutes of the United States for the purpose of recovering treble the damages attributable to violations of the antitrust statutes.

In the first alternative, Plaintiff moves for an immediate determination, as contemplated by Rule 12(d) of the Federal Rules of Civil Procedure, of the issues raised by defendants' affirmative defenses relating to the standing of a foreign government to maintain an action for damages under the antitrust laws of the United States; specifically, the affirmative defense designated "First", by Pfizer, Inc.; "C" by American Cyanamid Company; Paragraph "83" by Bristol-Myers Company; and "Third" by Squibb, Inc., E. R. Squibb and Sons, Inc., and Olin Corporation.

In the second alternative, Plaintiff moves to strike the affirmative defenses relating to the standing of a foreign government to maintain an action for damages, under the antitrust laws of the United States, specifically, the affirmative defenses designated "First" by Pfizer, Inc.; "C" by American Cyanamid Company; Paragraph "83" by Bristol-Myers Company; and 'Third" by Squibb, Inc., E. R. Squibb and Sons, Inc. and Olin Corporation.

Dated: Monday, June 19, 1972

LUCAS, O'CONNELL, FRIEDMAN & MANN
Joseph B. Friedman

HOLLABAUGH & JACOBS
Douglas V. Rigler

[Certificate of service omitted in printing.]

Complaint of the Imperial Government of Iran, February 6, 1974.

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MINNESOTA

In Re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions

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No. 4-74-65

JURY TRIAL DEMANDED

THE IMPERIAL GOVERNMENT OF IRAN,

Plaintiff,

v.

PFIZER, INC., AMERICAN CYANAMID COMPANY, BRISTOL-MYERS COMPANY, OLIN CORPORATION, THE UPJOHN COMPANY, SQUIBB, INC., and E. R. SQUIBB AND SONS, INC.

Defendants.

Complaint

Plaintiff, The Imperial Government of Iran, appearing herein by its attorneys, brings this Complaint against Pfizer, Inc., American Cyanamid Company, Bristol-Myers Company, Olin Corporation, The Upjohn Company, Squibb, Inc., and E. R. Squibb and Sons, Inc.

I

JURISDICTION AND VENUE

1. The jurisdiction of this Court to hear this Complaint is based upon the original jurisdiction of the Court to hear

"any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraint and monopolies," and, as herinafter set forth, this controversy involves Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), Act of July 2, 1890, Ch. 647, §§ 1 and 2, 26 Stat. 209, as amended; and Sections 1, 4, 5, 12 and 16 of the Clayton Act (15 U.S.C. §§ 12, 15, 16, 22 and 26), Act of October 15, 1914, Ch. 323, §§ 1, 4, 5, 12 and 16, 38 Stat. 730, 731, 736 and 737, as amended. Plaintiff sues for appropriate injunctive relief and to recover treble damages which Plaintiff and the classes it represents have sustained because of the violations by Defendants of the above cited statutes, plus costs of suit and reasonable attorneys' fees.

2. Each Defendant maintains an office, transacts business, is found, or has an agent within this district.

II

PLAINTIFF

3. Plaintiff, the Imperial Government of Iran (hereinafter referred to as Iran) is a sovereign foreign state with whom the United States of America maintains diplomatic relations.

4. Plaintiff, and Plaintiff's departments, agencies, commissions, institutions, instrumentalities and subdivisions, has purchased, directly and indirectly, substantial amounts of broad spectrum antibiotics and broad spectrum antibiotic products during the period in suit in transactions arising out of the foreign and/or interstate commerce of the United States of America.

III

Capacities in Which Plaintiff Sues

5. Plaintiff, on its own behaif and on behalf of its departments, agencies, commissions, institutions, instrumentalities and subdivisions, maintains this action as a direct and indirect purchaser of broad spectrum antibiotics and broad spectrum antibiotic products (hereinafter BSA and BSAP).

6. Plaintiff maintains this action as the representative of a class consisting of political subdivisions in Iran which purchased BSA and BSAP.

7. Plaintiff maintains this action as the representative of a class consisting of individual purchasers and consumers in Iran who purchased and consumed BSA and BSAP.

8. Plaintiff maintains this action as the representative of a class consisting of hospitals and clinics in Iran which purchased BSA and BSAP.

9. Plaintiff maintains this action as the representative of a class consisting of importers, distributors, retailers and wholesalers in Iran who purchased BSA and BSAP.

10. Plaintiff maintains this action, in a *parens patriae* and proprietary capacity, for damages to its proprietary, commercial and business interests, including loss of foreign exchange, arising from purchases of BSA and BSAP.

11. Plaintiff maintains this action, in a *parens patriae* capacity, for direct out-of-pocket damages suffered by political subdivisions, individuals, hospitals, clinics, retailers, wholesalers and importers in Iran who purchased BSA and BSAP.

12. Plaintiff maintains this action as the representative of the pharmacists of Iran.

13. Each of the above-mentioned classes is so numerous that joinder of all members is impracticable. There are questions of law and fact common to each class. The claims of the Government of Iran, as the representative of each class, are typical of the claims of each class. And the Government of Iran will fairly and adequately represent each class.

14. This action will be dispositive of the interests of the members of the above-mentioned classes.

15. The questions of law and fact common to the members of each class predominate over questions involving only individual members, and a class action is superior to other available methods for the fair and efficient resolution of the controversy.

IV

Defendants

16. Defendant Pfizer, Inc. (hereinafter Pfizer) is a corporation organized and existing under the laws of the State of Delaware with principal offices located in New York, New York. Pfizer is the successor to and was formerly known as and transacted business under the name of Chas. Pfizer & Co., Inc. Pfizer is and was engaged in the manufacture, sale, and distribution of various drug products, including BSA and BSAP, which business is conducted in the United States and throughout the world, including Iran. In its international manufacturing and sales activities, Pfizer sometimes operates and conducts business

through wholly or substantially owned foreign or domestic subsidiaries.

17. Defendant American Cyanamid Company (hereinafter Cyanamid) is a corporation organized and existing under the laws of the State of Maine with principal offices located in New York, New York. Cyanamid is and was engaged in the manufacture, sale and distribution of various drug products, including BSA and BSAP, which business is conducted in the United States and throughout the world, including Iran. In its international manufacturing and sales activities, Cyanamid sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

18. Defendant Bristol-Myers is a corporation organized and existing under the laws of the State of Delaware whose principal offices are located in New York, New York. The activities of Bristol-Myers in the pharmaceutical field are carried on by Bristol Laboratories Division. Prior to December 1959, the business and assets of the Bristol Laboratories Division were operated as a wholly owned subsidiary of Bristol-Myers Company. Defendant Bristol-Myers Company and Bristol Laboratories, Inc., are hereinafter severally and jointly referred to as "Bristol" unless otherwise indicated. Bristol is and was engaged in the manufacture, sale and distribution of various drug products including BSA and BSAP, which business is conducted in the United States and throughout the world, including Iran. In its international manufacturing and sales activities, Bristol sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

19. Defendant Upjohn Company (hereinafter Upjohn) is a corporation organized and existing under the laws of the State of Michigan with principal offices located in Kalamazoo, Michigan. Upjohn was and is engaged in the manufacture, sale and distribution of various drug products, including BSA and BSAP, which business is conducted in the United States and throughout the world, including Iran. In its interational manufacturing and sales activities, Upjohn sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

20. Olin Corporation is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal offices located in New York, New York. Olin is the successor to, and formerly was known as and transacted business under the name Olin Mathieson Chemical Corporation. Until approximately January 1968, Olin was engaged in the manufacture, sale and distribution of various drug products, including BSA, which business was conducted in the United States and throughout the world, including Iran. In its international manufacturing and sales activities, Olin sometimes operated and conducted business through wholly or substantially owned foreign or domestic subsidiaries.

21. Squibb, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal offices and place of business located at 460 Park Avenue, New York, New York.

22. E. R. Squibb & Sons, Inc. (sometimes hereinafter referred to as Squibb) is a corporation organized and exist-

ing under the laws of the State of Delaware, with its principal office and place of business located in New York, New York. E. R. Squibb & Sons, Inc., is a wholly owned subsidiary of Squibb, Inc., and is engaged in the manufacture, sale and distribution of various drug products, including BSA and BSAP, in the United States and throughout the world, including Iran. Prior to approximately January 1, 1966, the business and assets of E. R. Squibb & Sons, Inc., were operated as the Squibb Division of the defendant Olin. Effective January 1, 1966, Olin transferred all assets and liabilities relating to its pharmaceutical operations to E. R. Squibb & Sons, Inc., a wholly owned subsidiary. In September 1967, Olin and Beech-Nut Life Savers, Inc. (Beech-Nut) agreed upon a merger of E. R. Squibb & Sons, Inc., and Beech-Nut. In anticipation of the merger, Olin transferred all the capital stock of its subsidiary E. R. Squibb & Sons, Inc., in exchange for all of the stock of Squibb, Inc., a corporation newly organized for purposes of effectuating the merger. Immediately prior to the merger, Olin distributed its entire interest in Squibb, Inc., to Olin's stockholders on a pro rata basis. On January 15, 1968, Beech-Nut was merged into Squibb Enterprises, Inc., a wholly owned subsidiary of Squibb, Inc., and the stockholders of Beech-Nut received shares of Squibb, Inc., in exchange for their stock. The name of Squibb, Inc., was changed to Squibb Beech-Nut, Inc., which on April 30, 1971, changed it name to Squibb, Inc. Squibb, Inc., operates through four major subsidiaries: E. R. Squibb & Sons, Inc.; Beech-Nut, Inc.; Dobbs House, Inc.; and Lanvin-Charles of the Ritz, Inc. As a result of these transactions, the assets formerly held by E. R. Squibb & Sons, Inc., the Olin subsidiary, are now held by the defendant E. R. Squibb & Sons, Inc., which is a newly organized, wholly owned subsidiary of Squibb, Inc. In its international manufacturing and sales activities, Squibb sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

V

Definitions

23. As used herein:

a. The term "antibiotics" means chemical substances produced by a microorganism, or by chemical synthesis, which have the capacity to inhibit the growth of other harmful microorganisms or to destroy them.

b. The term "broad spectrum antibiotics" (sometimes herein referred to as BSA) means antibotics which are effective against a wide range of harmful microorganisms, including gram positive and gram negative pathogenic microorganisms, rickettsiae, viruses, spirochetes and protozoa. BSA includes tetracycline, chlortetracycline, oxytetracycline, doxycycline, minocycline, demeclocycline and methacycline.

c. The term "Tetracycline" means the generic name of the broad spectrum antibiotic whose chemical name and structure are 4-dimethylamino—1, 4, 4a, 5, 5a, 6, 11, 12a—octahydro—3, 6, 10, 12, 12a—pentahydroxy—6, methyl—1, 11—dioxo—2 napthacene carboxamide and salts, hydrates, esters, complexes and analogs thereof.

d. The term "Aureomycin" means the brand name of the broad spectrum antibiotic manufactured and sold by Cyanamid whose generic name is chlortetracycline, and salts and analogs thereof.

e. The term "Terramycin" means the brand name of the broad spectrum antibiotic manufactured and sold by Pfizer, whose generic name is oxytetracycline, and salts and analogs thereof.

f. The term "Chloromycetin" means the brand name of the broad spectrum antibiotic manufactured and sold by Parke, Davis & Co., whose generic name is chloramphenicol.

g. The term "Products" shall mean any product in the form in which it is sold to retail and wholesale sellers of drugs, hospital, surgical and dental supply houses, doctors, dentists, hospitals, clinics, and government agencies and government institutions, or any one of them. "BSAP" as hereinafter sometimes used shall mean broad spectrum antibiotic products.

h. The term "bulk form" means the chemical form in which a pharmaceutical product is manufactured but which requires packaging in dosage form so as to render it suitable for sale to the drug trade and dispensing to the ultimate consumer.

VI

Nature of Trade and Commerce

24. BSAP are widely used by the medical profession in the treatment of human infectious diseases. They are effective against a wide range of infectious diseases. BSA

are used and sold throughout the world and are regularly shipped within and from the United States in interstate and foreign commerce.

25. During most of the period covered by this Complaint, the BSAP market consisted of (a) Aureomycin, (b) Terramycin, (c) Tetracycline, and (d) Chloromycetin. All four are effective against substantially the same range of pathogenic microorganisms and are substantially interchangeable in medical use. Aureomycin, Terramycin and Chloromycetin have closely similar molecular structures.

26. The first broad spectrum antibiotic sold in the United States was chlortetracycline. Since December 1948, Cyanamid has marketed this product under the trade name "Aureomycin". On September 14, 1949, Cyanamid, as the assignee of the Duggar application, received U.S. Patent No. 2,482,055 on "Aureomycin and the preparation of same." On September 2, 1952, Cyanamid, as the assignee of the Niedercorn application, received U.S. Patent No. 2,609,329, which was an improvement patent on the process for producing Aureomycin.

27. On October 4, 1949, Parke, Davis & Co. received U.S. Patent No. 2,483,885 on the broad spectrum antibiotic chloramphenicol; and since 1949 it has marketed the product under the trade name Chloromycetin.

28. On July 18, 1950, Pfizer received U.S. Patent No. 2,516,080 on the broad spectrum antibiotic oxytetracycline; and since 1950 it has marketed the product under the trade name of Terramycin.

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29. On January 11, 1955, Pfizer, as assignee of the Conover application, received U.S. Patent No. 2,699,054 on the broad spectrum antibiotic Tetracycline.

30. Tetracycline is manufactured by one of two principal methods: (1) a process which subjects chlortetracycline to hydrogenation in the presence of a catalyst which removes the chlorine atom from the molecule, and (2) by a direct fermentation process. At the outset of their manufacture of Tetracycline and for a substantial period of time thereafter, Pfizer and Cyanamid used the hydrogenation process while Bristol used the direct fermentation process.

31. During much of the period covered by this Complaint, Tetracycline was manufactured only by Pfizer, Cyanamid and Bristol. In the United States, Tetracycline was not manufactured by any manufacturer other than Pfizer, Cyanamid and Bristol until late in 1962.

32. Cyanamid has been licensed by Pfizer to manufacture and sell Tetracycline since the issuance of the Conover patent on January 11, 1955. Bristol has been licensed by Pfizer to manufacture and sell Tetracycline since March 28, 1956. Upjohn and Squibb have been licensed to sell some Tetracycline products since March 28, 1956, pursuant to the terms of an agreement between each of them and Pfizer.

33. For a substantial portion of the time covered by this Complaint, Tetracycline products were sold in the U.S. and abroad only by Pfizer, Cyanamid, Bristol, Upjohn and Squibb. Cyanamid commenced selling Tetracycline products in November 1953; Pfizer, in January 1954; Bristol, in April 1954; Squibb in September 1954; and Upjohn in October 1954.

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34. For many years commencing in 1954, Upjohn and Squibb purchased all their bulk Tetracycline from Bristol, which, for a substantial period of time covered by this Complaint, was the only seller of bulk Tetracycline.

35. Each of the defendant companies sells Tetracycline products under its own brand or trade name. All use substantially identical dosage forms. The introductory brand names used by Defendants for their Tetracycline products were Cyanamid's "Achromycin"; Pfizer's "Tetracyn"; Bristol's "Polycycline"; Squibb's "Steclin"; and Upjohn's "Panmycin".

36. Cyanamid did not license anyone to manufacture and sell Chlortetracycline in the U.S., and for many years it limited its licenses abroad to its subsidiary companies.

37. Pfizer did not license anyone to manufacture and sell oxytetracycline in the U.S. and limited its license abroad to its subsidiary companies.

38. Parke, Davis & Co. did not license anyone to manufacture and sell chloramphenicol in the U.S. and limited its licenses abroad to its subsidiary companies.

39. As a result, Cyanamid, Pfizer and Parke, Davis enjoyed a monopoly on the production and sale of their respective BSA in the United States.

40. Cyanamid and Pfizer each applied for and obtained foreign counterpart patents for chlortetracycline and oxytetracycline respectively and Pfizer for tetracycline and each company sought and received many foreign counterpart patents for improvements and process patents for the

manufacture of these drugs and other subsequently developed BSA.

41. Bristol applied for and received foreign counterpart patents for the production or process or manufacture of certain BSA or BSAP; and in certain foreign countries Bristol obtained a product patent on Tetracycline, notwithstanding its failure to obtain such a patent in the United States.

42. As a result of obtaining the aforesaid U.S. and foreign counterpart patents and their policy not to license others to manufacture or sell these BSA, Pfizer, Cyanamid, Bristol, and Parke, Davis enjoyed a monopoly on the production and sale of these antibiotics throughout much of the world.

43. Tetracycline is the most widely used broad spectrum antibiotic. In the United States sales of Tetracycline products in 1954 amounted to about $39,500,000. In 1957 these sales totaled approximately $114,000,000 and in 1959 the amount sold was $95,000,000.

44. BSAP are sold by Defendants to customers who are classified in the U.S. market as either retail druggists, wholesalers, private hospitals, tax-supported hospitals, or federal government agencies. All Defendants sell directly to these classifications except that Upjohn has not always sold directly to wholesalers.

45. Within the United States, prices of all BSAP remained substantially unchanged from October 1951 to at least July 1960 to the retailer, wholesaler and hospital classifications.

46. International pricing and sales policies for BSA and BSAP are coordinated and controlled by each Defendant's respective management within the United States. Sales and price policies of Defendants' overseas subsidiaries engaged in the manufacture or sale of BSA or BSAP are reviewed by each Defendant's respective management within the United States and are subject to the control of management within the United States.

47. Patent licensing agreements and bulk sales agreements between Defendants and manufacturers or sellers of BSA and BSAP outside of the United States are reviewed and approved by each Defendants' respective management within the United States. Such agreements relating to BSA and BSAP are frequently negotiated within the United States.

48. Substantial quantities of BSA and BSAP manufactured by Defendants in the United States have been sold and shipped to customers outside of the United States, including customers in Iran.

49. Some BSA and BSAP purchased from the Defendants by customers in Iran may have been manufactured outside of the United States by Defendants' wholly or partially owned subsidiaries.

50. Some BSA and BSAP purchased by customers in Iran may have been manufactured outside of the United States by licensees of Defendants. Such licensees pay or paid royalties to Defendants based upon the use of Defendants' U.S. BSA patents and their foreign counterparts. These patents include but are not limited, to the foreign

counterpart patents of U.S. Patent No. 2,600,054 (Conover); U.S. Patent No. 2,482,055 (Duggar); U.S. Patent No. 2,609,329 (Niedercorn); U.S. Patent No. 2,734,018 (Minieri); U.S. Patent No. 3,092,556; Reissue RE 25,840 (Growich).

VII

Background of the Conspiracy

51. In 1952 Pfizer's Terramycin product sales in the United States totaled over $39,000,000. Cyanamid's Aureomycin product sales in the United States totaled over $38,000,000. These sales amounted to approximately 78 percent of the broad spectrum product market in 1952.

52. In 1953 Pfizer's Terramycin product sales in the United States totaled over $36,500,000. Cyanamid's Aureomycin product sales in the United States were about $32,000,000. These sales amounted to approximately 92 percent of the broad spectrum product market in 1953.

53. As of November 1953, prices of the narrow spectrum antibiotics such as penicillin and streptomycin, which were not patented and were sold by numerous companies, were severely depressed. Each of the defendant companies engaged or had been engaged in the manufacture or sale of such narrow spectrum antibiotics.

54. As of November 1953, Bristol Laboratories, Inc., a then wholly owned subsidiary of Bristol (and presently an operating division thereof) was operating at a loss by reason of the continued decline in the sales price of penicillin which then constituted the major part of the total business of Bristol Laboratories, Inc.

55. As of November 1953, prices of the BSAP then on the market, all patented, were all substantially identical and non-competitive, and had all been maintained at the price level in effect on October 1, 1951.

56. As of November 1953, patent applications on Tetracycline, filed in 1953 by Pfizer, Cyanamid and Bristol severally, were pending in the Patent Office. Pfizer's pending application was a continuation of a previous application rejected by the Patent Office.

57. On September 23, 1953, Heyden Chemical Company filed an application for a patent on Tetracycline. This application was acquired by Cyanamid in December 1953 after arrangements for its acquisition had been completed in November 1953.

58. On or about October 29, 1953, Pfizer and Cyanamid were informed by the Patent Office that an interference would probably be declared on their respective Tetracycline patent applications.

59. By October 1953, Pfizer knew that Cyanamid was interested in Tetracycline and was testing it clinically. Cyanamid also knew then that Pfizer was interested in Tetracycline.

60. As of November 1953, Pfizer and Cyanamid knew that Tetracycline was directly competitive with Terramycin and Aureomycin respectively, and that Tetracycline represented a threat to the continuation of their dominant positions and high profits in the then existing BSAP market. Pfizer and Cyanamid also knew that unless one of them could obtain a product patent on Tetracycline, prices of the BSAP could become competitive.

61. In 1954, Bristol had a very small sales force selling pharmaceuticals directly to the drug trade. Upjohn and Squibb, at such time, each had a very large sales force engaged in the direct sale of pharmaceuticals to the drug trade.

62. Prior to the introduction of Tetracycline products, Cyanamid was manufacturing and selling Aureomycin, ostensibly pursuant to coverage under the Duggar and Niedercorn patents and Cyanamid purportedly had the ability to exclude other companies from the Aureomycin market through the assertion of these patents. In applying for these patents and during the processing of these patent applications, Cyanamid did not disclose the best known mode and manner of its invention and thereby obtained these patents by knowing and willful non-compliance with Patent Office requirements. Accordingly, there is substantial reason to believe that these patents are invalid and unenforceable.

63. Cyanamid's Growich and Minieri patent applications did not conform with Patent Office rules and standards which may render these patents invalid and unenforceable.

VIII

Violations of Law

64. Beginning in or about November 1953, the exact date being unknown to Plaintiff, the Defendants have engaged in an unlawful combination and conspiracy to restrain interstate and foreign trade and commerce in the manufacture, sale and distribution of BSA and BSAP, have combined and

conspired to monopolize such interstate and foreign trade and commerce and have attempted to monopolize and monopolized such trade and commerce, in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2).

The substantial terms of the aforesaid violations have been and are that:

a. The manufacture of Tetracycline be confined to Pfizer, Cyanamid and Bristol in the United States and to a limited number of licensees abroad.

b. The sale of Tetracycline products be confined to Pfizer, Cyanamid, Bristol, Upjohn and Squibb in the United States and to a limited number of licensees abroad.

c. The sale of bulk Tetracycline be confined to Bristol and bulk Tetracycline be sold by Bristol only to Upjohn and Squibb in the United States and Defendants' bulk sales abroad would be to a limited and controlled number of customers.

d. The sale of BSAP by the defendant companies, their subsidiaries and their licensees and/or bulk customers in the United States and abroad be at substantially identical and non-competitive prices.

65. Pfizer, in addition to acting in concert with other Defendants as alleged above, unilaterally has acted to mislead or defraud the U.S. Patent Office, and has utilized its patent position, to secure for itself, and to attempt to secure for itself, a monopoly in BSA, and particularly Tetracycline, in the United States and abroad; further, Pfizer, in reliance on said patent position, has engaged in acts in restraint of

domestic and foreign trade and commerce in order to obtain and exploit this monopoly, and attempted monopoly, of the broad spectrum antibiotic and Tetracycline market.

66. Cyanamid, in addition to acting in concert with other Defendants as alleged above, unilaterally has acted to mislead or defraud the U.S. Patent Office, and has utilized its patent position, to secure for itself, and to attempt to secure for itself, a monopoly in BSA, and particularly Chlortetracycline, in the United States and abroad; further, Cyanamid, in reliance on said patent position, has engaged in acts in restraint of domestic and foreign trade and commerce in order to obtain and exploit this monopoly, and attempted monopoly, of the broad spectrum antibiotic and Chlortetracycline market.

67. The said violations have been effectuated by various means and methods including, but not limited to, those alleged in paragraphs 69 through 91 of this Complaint.

68. Cyanamid licensed Pfizer and Bristol to use its Aureomycin patent in the manufacture of Tetracycline and refused to license all other domestic and most foreign applicants.

69. Pfizer licensed Cyanamid and Bristol under its Tetracycline patent and refused to license all other domestic and most foreign applicants.

70. Cyanamid assisted and cooperated with Pfizer in obtaining for Pfizer a patent on Tetracycline.

71. Pfizer, Cyanamid and Bristol suppressed litigation involving the validity of Pfizer's Tetracycline patent.

72. Pfizer, Cyanamid and Bristol withheld pertinent and material information from the Patent Office and otherwise misled the Patent Office prior to the issuance of Pfizer's Tetracycline patent.

73. Cyanamid acquired the competing Heyden patent application on Tetracycline and abandoned the product claims therein.

74. Bristol sold bulk Tetracycline only to Upjohn and Squibb. For a substantial period of time covered by this Complaint, each of the defendant companies refused to sell bulk Tetracycline to all others except that Cyanamid sold a large amount of bulk Tetracycline to Pfizer in early 1954 in assisting Pfizer to make a prompt entry into the Tetracycline product market.

75. Bristol entered into agreements with Upjohn and Squibb, respectively, which requested Upjohn and Squibb to purchase all their requirements of bulk tetracycline from Bristol.

76. Pfizer issued licenses to Upjohn and Squibb, respectively limited, however, at Bristol's request to the sale of Tetracycline products.

77. Pfizer and Cyanamid have maintained substantially identical, non-competitive prices on Terramycin products and Aureomycin products, respectively.

78. Pfizer, Cyanamid, Bristol, Upjohn and Squibb each introduced its Tetracycline products on the market at prices which were substantially identical with each other and which conformed to the non-competitive prices of Terra-

mycin products and Aureomycin products in effect as of November 1953, and all these companies thereafter maintained such substantially identical, non-competitive prices.

79. Pfizer, Cyanamid, Bristol, Upjohn and Squibb each introduced its Tetracycline products on the market in dosage forms and customer classifications substantially identical with the Terramycin product and Aureomycin product dosage forms and customer classifications in effect as of November 1953, and have continued to use such substantially identical dosage forms and classifications.

80. Defendants have communicated with one another and advise one another both in the United States and throughout the world with respect to current and future prices of BSAP.

81. Defendants have jointly sought to restrict or inhibit the purchase of BSA and BSAP which were not manufactured by one of the Defendants.

82. Defendants have consulted with respect to action to inhibit or foreclose the purchase of BSA and BSAP in their generic form and have jointly acted to inhibit or foreclose such purchases.

83. Defendants have jointly agreed as to which patents on BSA and BSAP would be maintained on a worldwide (country-by-country) basis.

84. Defendants have advised and consulted with each other with respect to which of them would bring patent infringement actions or threaten such actions and under which patent relating to BSAP such legal action or threat

of legal action would be based in order to prevent the sale of BSA or BSAP by companies other than the Defendants or their licensees.

85. Defendants have threatened to bring and have brought legal actions to prevent the sale of BSA or BSAP by persons other than Defendants or their licensees notwithstanding Defendants' knowledge that patents relied upon in such lawsuits were fraudulently obtained or were being misused.

86. Defendants have entered into understandings, express or implicit, among themselves and their licensees that certain Defendants or certain of their licensees would not compete in some markets or areas of the world.

87. Defendants have established or attempted to establish worldwide or area prices concerning and governing the sale of BSAP.

88. Defendants have knowingly disparaged the quality of competitive products and have sought to convince prospective customers that competitive BSAP were inferior notwithstanding Defendants' knowledge of the falsity of such assertions or statements.

89. Defendants have purchased or atempted to purchase additional fermentation capacity or entered into bulk purchase contracts with other fermenters thus giving them control over competitive fermentation capacity for BSA and BSAP.

90. Defendants have sold BSA and BSAP on the express or implicit understanding that such products would not be re-exported in any form outside of the country in which they were originally sold.

IX

Effects of the Violations

91. The violations hereinbefore alleged have had the following effects on interstate and foreign commerce, among others:

a. Iran and its political subdivisions, individual consumers, hospitals and clinics, retailers, wholesalesalers and importers in Iran, have all been deprived of the benefits of competition and have been compelled to pay high, non-competitive prices for BSA and BSAP.

b. Iran has been deprived of vital foreign exchange reserves because excessive amounts of foreign exchange have been required not only to pay for BSA and BSAP at the non-competitive prices charged by Defendants or their licensees but also to enable Defendants or their licensees to make remittances from Iran, in United States dollars or other foreign currencies, of their profits resulting from sales in the RVN of BSA and BSAP at the non-competitive prices charged by them.

c. Pfizer and Cyanamid have been able to maintain unchanged for prolonged periods their substantially identical, non-competitive, high prices of Terramycin products and Aureomycin products without any price competition from Tetracycline products.

d. Pfizer, Cyanamid, Bristol, Upjohn and Squibb have been able to maintain unchanged for prolonged

periods substantially identical, non-competitive, high prices of all BSA and BSAP sold by them, and price competition in the sale and distribution of BSA and BSAP has been prevented and suppressed.

e. Pfizer, Cyanamid, and Bristol, Squibb and Upjohn have been able to make non-competitive, high profits from the sale of their BSAP.

f. Bristol has been able to make non-competitive, high profits in the sale of bulk Tetracycline.

g. A judicial determination of the validity of Pfizer's Tetracycline patent has been prevented.

h. Introduction of improved forms and methods of administration of BSA by other companies has been restricted and prevented and research in this field has been hampered.

i. Pharmaceutical companies other than the defendant companies desiring to engage in the manufacture or sale of BSA or BSAP have been prevented and precluded from doing so.

j. Other producers and sellers of BSA and BSAP have been precluded from effectively competing in Iran.

X

Judgments in Governmental Proceedings

92. On July 28, 1958, the Federal Trade Commission issued a Complaint against Pfizer, Bristol, Cyanamid, Squibb and Upjohn, charging, *inter alia*, that Pfizer made

false, misleading and incorrect statements to, and withheld material information from, the United States Patent Office for the purpose and with the effect of inducing the issuance of a patent on Tetracycline. *In the Matter of American Cyanamid Co., et al.*, F.T.C. Docket No. 7211. The Complaint also alleged that Bristol and Cyanamid withheld from the Patent Office material information in the course of the prosecution of patent applications, as a result of which Pfizer was aided in obtaining its Tetracycline patent. It was further alleged that Cyanamid, Bristol, Squibb and Upjohn solicited and accepted licenses from Pfizer under the Tetracycline patent, knowing that material information had been withheld from the Patent Office by one or more of the Defendants. The Complaint further alleged that all five Defendants conspired and combined to fix and maintain prices of BSA, including Tetracycline. On September 29, 1967, the Federal Trade Commission found that Pfizer had obtained the Tetracycline patent by material misrepresentation to, and withholding pertinent information from, the Patent Office; that Pfizer had attempted to monopolize Tetracycline; and that Cyanamid had also withheld material information from the Patent Office in connection with the issuance of the Tetracycline patent. The Commission found that Pfizer's conduct violated Section 2 of the Sherman Act and was therefore a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The Commission further found that Cyanamid's conduct also violated Section 5 of the Federal Trade Commission Act. The Commission issued a final order directing Pfizer and Cyanamid to make licenses under their patents on Tetracycline and Aureomycin available to all other

domestic companies on a specified royalty basis. On September 30, 1968, the United States Court of Appeals for the Sixth Circuit affirmed the decision and order of the Federal Trade Commission. *Charles Pfizer & Co.* v. *F.T.C.*, 401 F.2d 574 (6th Cir. 1968). Plaintiff's action is based in part upon the matters complained of and determined in this proceeding.

93. On August 17, 1961, the United States of America instituted a criminal prosecution, 61 Cr. 772, in the United States District Court for the Southern District of New York, naming Pfizer, Cyanamid and Bristol as defendants, and Squibb and Upjohn as co-conspirators. The three-count indictment alleged the same combination and conspiracy to restrain trade and to monopolize and monopolization which are the subject matter of the present action. On December 29, 1967, after a jury trial, defendants Pfizer, Cyanamid and Bristol were each found guilty of each of the violations charged. Judgments of conviction were entered and maximum fines imposed on February 28, 1968. On January 28, 1972, an equally divided Supreme Court affirmed an order of the Second Circuit, 437 F.2d 957, affirming 426 F.2d 32, that a new trial was required due to errors in the jury charge delivered by the District Court. Plaintiff's action is based in part upon the matters charged in this proceeding. On or about December 1, 1973, following a retrial, the criminal charges against Defendants were dismissed.

XI

Fraudulent Concealment

94. Plaintiff had no knowledge of the violations alleged herein or of the facts which might have led to the discovery of the violations, until after the institution of the litgation referred to in paragraphs 92 and 93. Plaintiff could not have discovered the said antitrust violations at an earlier date by the exercise of due diligence, inasmuch as said antitrust violations had been fraudulently concealed from their inception by the Defendants by various means and methods used to avoid the detection thereof. Said fraudulent concealment consisted in part of the following acts: misrepresenting material facts and withholding pertinent information from the Patent Office; tightly controlling the dissemination of documents containing relevant data and subsequently destroying these documents.

95. During the pendency of the litigation referred to in paragraphs 92 and 93 and the fraudulent concealment referred to in paragraph 94, the statute of limitations applicable to the instant action (Clayton Act, Section 4(b), 15 U.S.C. § 15(b)) has been and continues to be suspended as provided by statute and otherwise. Clayton Act, Section 5(b), 15 U.S.C. § 16(b).

XII

Injury to Plaintiff

96. During the period of the Defendants' violations of the Sherman Act, Plaintiff and other members of the classes represented by Plaintiff purchased BSA and BSAP

from the Defendants and others. By reason of said violations, Plaintiff and other members of the classes represented by Plaintiff have been denied the benefits of unrestricted competition, and have paid more for BSA and BSAP than they would have paid had Defendants' violations not existed. As a result, Plaintiff and other members of the class it represents have been injured and damaged in their business or property by Defendants in an amount which presently is undetermined.

PRAYER

Wherefore, Plaintiff prays that:

(1) this Court adjudge and decree that the Defendants, and each of them, have combined and conspired to restrain and monopolize interstate and foreign trade and commerce in the manufacture, distribution and sale of BSA and BSAP; have each of them restrained such trade and commerce; and have monopolized and attempted to monopolize such trade and commerce as hereinbefore alleged, in violation of Section 1 and 2 of the Sherman Act;

(2) judgment be entered in favor of Plaintiff and the classes represented by Plaintiff against the Defendants, jointly and severally, for the injury and damage caused by Defendants in an amount threefold the actual damages sustained with interest thereon;

(3) this Court allow, and Defendants be required to pay, jointly and severally, the full costs of this suit, including as part thereof a reasonable fee for the services of Plaintiff's attorneys; and

Complaint of the Imperial Goverment of Iran, February 6, 1974.

(4) Plaintiff be granted such other, further, and different relief as the nature of the case may require and as may seem just and appropriate to this Court.

Counsel for Plaintiff
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HAROLD C. PETROWITZ
/s/ Ralph E. Becker
RALPH E. BECKER

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JURY DEMAND

Please take notice that Plaintiff demands a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable of right by a jury.

Amended Complaint of the Republic of Viet Nam, March 26, 1974.

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
No. 4-71 Civ. 402
JURY TRIAL DEMANDED

In Re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions

THE REPUBLIC OF VIET-NAM,
Plaintiff,
v.
PFIZER, INC., AMERICAN CYANAMID COMPANY, BRISTOL-MYERS COMPANY, OLIN CORPORATION, THE UPJOHN COMPANY, SQUIBB, INC., and E. R. SQUIBB AND SONS, INC.,
Defendants.

Amended Complaint

Plaintiff, The Republic of Viet-Nam, appearing herein by its attorneys, brings this Complaint against Pfizer, Inc., American Cyanamid Company, Bristol-Myers Company, Olin Corporation, The Upjohn Company, Squibb, Inc., and E. R. Squibb and Sons, Inc.

I

JURISDICTION AND VENUE

1. The jurisdiction of this Court to hear this Complaint is based upon the original jurisdiction of the Court to hear

"any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraint and monopolies," and, as hereinafter set forth, this controversy involves Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), Act of July 2, 1890, Ch. 647, §§ 1 and 2, 26 Stat. 209, as amended; and Sections 1, 4, 5, 12 and 16 of the Clayton Act (15 U.S.C. §§ 12, 15, 16, 22 and 26), Act of October 15, 1914, Ch. 323, §§ 1, 4, 5, 12 and 16, 38 Stat. 730, 731, 736 and 737, as amended. Plaintiff sues for treble damages, plus costs of suit and reasonable attorneys' fees.

2. Each Defendant maintains an office, transacts business, is found, or has an agent within this district.

II

Plaintiff

3. Plaintiff, The Republic of Viet-Nam (hereinafter RVN), is a sovereign foreign state with whom the United States of America maintains diplomatic relations.

4. Plaintiff, and Plaintiff's departments, agencies, commissions, institutions, instrumentalities and subdivisions, has purchased, directly and indirectly, substantial amounts of broad spectrum antibiotics and broad spectrum antibiotic products during the period in suit in transactions arising out of the foreign and/or interstate commerce of the United States of America.

III

Capacities in Which Plaintiff Sues

5. Plaintiff, on its own behalf and on behalf of its departments, agencies, commissions, institutions, instrumentalities and subdivisions, maintains this action as a direct and indirect purchaser of broad spectrum antibiotics and broad spectrum antibiotic products (hereinafter BSA and BSAP).

6. Plaintiff maintains this action as the representative of a class consisting of political subdivisions in the RVN which purchased BSA and BSAP.

7. Plaintiff maintains this action as the representative of a class consisting of individual purchasers and consumers in the RVN who purchased and consumed BSA and BSAP.

8. Plaintiff maintains this action as the representative of a class consisting of hospitals and clinics in the RVN which purchased BSA and BSAP.

9. Plaintiff maintains this action as the representative of a class consisting of retailers and wholesalers in the RVN who purchased BSA and BSAP.

10. Plaintiff maintains this action, in a *parens patriae* and proprietary capacity, for damages to its proprietary, commercial and business interests, including loss of foreign exchange, arising from purchases of BSA and BSAP.

11. Plaintiff maintains this action, in a *parens patriae* capacity, for direct out-of-pocket damages suffered by

political subdivisions, individuals, hospitals, clinics, retailers, wholesalers and importers in the RVN who purchased BSA and BSAP.

12. Plaintiff maintains this action as the authorized representative of the Union of Pharmacists of Viet-Nam and of the members of said Union.

13. Each of the above-mentioned classes is so numerous that joinder of all members is impracticable. There are questions of law and fact common to each class. The claims of the Government of the RVN, as the representative of each class, are typical of the claims of each class. And the Government of the RVN will fairly and adequately represent each class.

14. This action will be dispositive of the interests of the members of the above-mentioned classes.

15. The questions of law and fact common to the members of each class predominate over questions involving only individual members, and a class action is superior to other available methods for the fair and efficient resolution of the controversy.

IV

Defendants

16. Defendant Pfizer, Inc. (hereinafter Pfizer) is a corporation organized and existing under the laws of the State of Delaware with principal offices located in New York, New York. Pfizer is the successor to and was formerly known as and transacted business under the name

of Chas. Pfizer & Co., Inc. Pfizer is and was engaged in the manufacture, sale, and distribution of various drug products, including BSA and BSAP, which business is conducted in the United States and throughout the world, including the RVN. In its international manufacturing and sales activities, Pfizer sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

17. Defendant American Cyanamid Company (hereinafter Cyanamid) is a corporation organized and existing under the laws of the State of Maine with principal offices located in New York, New York. Cyanamid is and was engaged in the manufacture, sale and distribution of various drug products, including BSA and BSAP, which business is conducted in the United States and throughout the world, including the RVN. In its international manufacturing and sales activities, Cyanamid sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

18. Defendant Bristol-Myers is a corporation organized and existing under the laws of the State of Delaware whose principal offices are located in New York, New York. The activities of Bristol-Myers in the pharmaceutical field are carried on by Bristol Laboratories Division. Prior to December 1959, the business and assets of the Bristol Laboratories Division were operated as a wholly owned subsidiary of Bristol-Myers Company. Defendant Bristol-Myers Company and Bristol Laboratories, Inc., are hereinafter severally and jointly referred to as "Bristol" unless otherwise indicated. Bristol is and was engaged in the

manufactue, sale and distibution of various drug products including BSA and BSAP, which business is conducted in the United States and throughout the world, including the RVN. In its international manufacturing and sales activities, Bristol sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

19. Defendant Upjohn Company (hereinafter Upjohn) is a corporation organized and existing under the laws of the State of Michigan with principal offices located in Kalamazoo, Michigan. Upjohn was and is engaged in the manufacture, sale and distribution of various drug products, including BSA and BSAP, which business is conducted in the United States and throughout the world, including the RVN. In its international manufacturing and sales activities, Upjohn sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

20. Olin Corporation is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal offices located in New York, New York. Olin is the successor to and formerly was known as and transacted business under the name Olin Mathieson Chemical Corporation. Until approximately January 1968, Olin was engaged in the manufacture, sale and distribution of various drug products, including BSA, which business was conducted in the United States and throughout the world, including the RVN. In its international manufacturing and sales activities, Olin sometimes operated and conducted business through wholly or substantially owned foreign or domestic subsidiaries.

21. Squibb, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal offices and place of business located at 460 Park Avenue, New York, New York.

22. E. R. Squibb & Sons, Inc. (sometimes hereinafter referred to as Squibb) is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located in New York, New York. E. R. Squibb & Sons, Inc., is a wholly owned subsidiary of Squibb, Inc., and is engaged in the manufacture, sale and distribution of various drug products, including BSA and BSAP, in the United States and throughout the world, including the RVN. Prior to approximately January 1, 1966, the business and assets of E. R. Squibb & Sons, Inc., were operated as the Squibb Division of the defendant Olin. Effective January 1, 1966, Olin transferred all assets and liabilities relating to its pharmaceutical operations to E. R. Squibb & Sons, Inc., a wholly owned subsidiary. In September 1967, Olin and Beech-Nut Life Savers, Inc. (Beech-Nut) agreed upon a merger of E. R. Squibb & Sons, Inc., and Beech-Nut. In anticipation of the merger, Olin transferred all the capital stock of its subsidiary E. R. Squibb & Sons, Inc., in exchange for all of the stock of Squibb, Inc., a corporation newly organized for purposes of effectuating the merger. Immediately prior to the merger, Olin distributed its entire interest in Squibb, Inc., to Olin's stockholders on a pro rata basis. On January 15, 1968, Beech-Nut was merged into Squibb Enterprises, Inc., a wholly owned subsidiary of Squibb, Inc., and the stockholders of Beech-Nut received shares of Squibb, Inc., in

exchange for their stock. The name of Squibb, Inc., was changed to Squibb Beech-Nut, Inc., which on April 30, 1971, changed its name to Squibb, Inc. Squibb, Inc., operates through four major subsidiaries: E. R. Squibb & Sons, Inc.; Beech-Nut, Inc.; Dobbs House, Inc.; and Lanvin-Charles of the Ritz, Inc. As a result of these transactions, the assets formerly held by E. R. Squibb & Sons, Inc., the Olin subsidiary, are now held by the defendant E. R. Squibb & Sons, Inc., which is a newly organized, wholly owned subsidiary of Squibb, Inc. In its international manufacturing and sales activities, Squibb sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

V

Definitions

23. As used herein:

a. The term "antibiotics" means chemical substances produced by a microorganism, or by chemical synthesis, which have the capacity to inhibit the growth of other harmful microorganisms or to destroy them.

b. The term "broad spectrum antibiotics" (sometimes herein referred to as BSA) means antibiotics which are effective against a wide range of harmful microorganisms, including gram positive and gram negative pathogenic microorganisms, rickettsiae, viruses, spirochetes and protozoa. BSA includes tetracycline, chlortetracycline, oxytetracycline, doxycycline, minocycline, demeclocycline and methacycline.

c. The term "Tetracycline" means the generic name of the broad spectrum antibiotic whose chemical name and structure are 4-dimethylamino—1, 4, 4a, 5, 5a, 6, 11, 12a—octahydro—3, 6, 10, 12, 12a—pentahydroxy—6 methyl—1, 11—dioxo—2 napththa-cene carboxamide and salts, hydrates, esters, complexes and analogs thereof.

d. The term "Aureomycin" means the brand name of the broad spectrum antibiotic manufactured and sold by Cyanamid whose generic name is chlortetracycline, and salts and analogs thereof.

e. The term "Terramycin" means the brand name of the broad spectrum antibiotic manufactured and sold by Pfizer, whose generic name is oxytetracycline, and salts and analogs thereof.

f. The term "Chloromycetin" means the brand name of the broad spectrum antibiotic manufactured and sold by Parke, Davis & Co., whose generic name is chloramphenicol.

g. The term "Products" shall mean any product in the form in which it is sold to retail and wholesale sellers of drugs, hospital, surgical and dental supply houses, doctors, dentists, hospitals, clinics, and government agencies and government institutions, or any one of them. "BSAP" as hereinafter sometimes used shall mean broad spectrum antibiotic products.

h. The term "bulk form" means the chemical form in which a pharmaceutical product is manufactured but which requires packaging in dosage form so as to render it suitable for sale to the drug trade and dispensing to the ultimate consumer.

VI

Nature of Trade and Commerce

24. BSAP are widely used by the medical profession in the treatment of human infectious diseases. They are effective against a wide range of infectious diseases. BSA are used and sold throughout the world and are regularly shipped within and from the United States in interstate and foreign commerce.

25. During most of the period covered by this Complaint, the BSAP market consisted of (a) Aureomycin, (b) Terramycin, (c) Tetracycline, and (d) Chloromycetin. All four are effective against substantially the same range of pathogenic microorganisms and are substantially interchangeable in medical use. Aureomycin, Terramycin and Chloromycetin have closely similar molecular structures.

26. The first broad spectrum antibiotic sold in the United States was chlortetracycline. Since December 1948, Cyanamid has marketed this product under the trade name "Aureomycin". On September 14, 1949, Cyanamid, as the assignee of the Duggar application, received U.S. Patent No. 2,482,055 on "Aureomycin and the preparation of same." On September 2, 1952, Cyanamid, as the assignee of the Niedercorn application, received U.S. Patent No.

2,609,329, which was an improvement patent on the process for producing Aureomycin.

27. On October 4, 1949, Parke, Davis & Co., received U.S. Patent No. 2,483,885 on the broad spectrum antibiotic chloramphenicol; and since 1949 it has marketed the product under the trade name Chloromycetin.

28. On July 18, 1950, Pfizer received U.S. Patent No. 2,516,080 on the broad spectrum antibiotic oxytetracyline; and since 1950 it has marketed the product under the trade name of Terramycin.

29. On January 11, 1955, Pfizer, as assignee of the Conover application, received U.S. Patent No. 2,699,054 on the broad spectrum antibiotic Tetracycline.

30. Tetracycline is manufactured by one of two principal methods: (1) a process which subjects chlortetracycline to hydrogenation in the presence of a catalyst which removes the chlorine atom from the molecule, and (2) by a direct fermentation process. At the outset of their manufacture of Tetracycline and for a substantial period of time thereafter, Pfizer and Cyanamid used the hydrogenation process while Bristol used the direct fermentation process.

31. During much of the period covered by this Complaint, Tetracycline was manufactured only by Pfizer, Cyanamid and Bristol. In the United States, Tetracycline was not manufactured by any manufacturer other than Pfizer, Cyanamid and Bristol until late in 1962.

32. Cyanamid has been licensed by Pfizer to manufacture and sell Tetracycline since the issuance of the Conover

patent on January 11, 1955. Bristol has been licensed by Pfizer to manufacture and sell Tetracycline since March 28, 1956. Upjohn and Squibb have been licensed to sell some Tetracycline products since March 28, 1956, pursuant to the terms of an agreement between each of them and Pfizer.

33. For a substantial portion of the time covered by this Complaint, Tetracycline products were sold in the U.S. and abroad only by Pfizer, Cyanamid, Bristol, Upjohn and Squibb. Cyanamid commenced selling Tetracycline products in November 1953; Pfizer, in January 1954; Bristol, in April 1954; Squibb in September 1954; and Upjohn in October 1954.

34. For many years commencing in 1954, Upjohn and Squibb purchased all their bulk Tetracycline from Bristol, which, for a substantial period of time covered by this Complaint, was the only seller of bulk Tetracycline.

35. Each of the defendant companies sells Tetracycline products under its own brand or trade name. All use substantially identical dosage forms. The introductory brand names used by Defendants for their Tetracycline products were Cyanamid's "Achromycin"; Pfizer's "Tetracyn"; Bristol's "Polycycline"; Squibb's "Steclin"; and Upjohn's "Panmycin".

36. Cyanamid did not license anyone to manufacture and sell Chlortetracycline in the U.S., and for many years it limited its licenses abroad to its subsidiary companies.

37. Pfizer did not license anyone to manufacture and sell oxytetracycline in the U.S. and limited its licenses abroad to its subsidiary companies.

38. Parke, Davis & Co. did not license anyone to manufacture and sell chloramphenicol in the U.S. and limited its licenses abroad to its subsidiary companies.

39. As a result, Cyanamid, Pfizer and Parke, Davis enjoyed a monopoly on the production and sale of their respective BSA in the United States.

40. Cyanamid and Pfizer each applied for and obtained foreign counterpart patents for chlortetracycline and oxytetracycline respectively and Pfizer for tetracycline and each company sought and received many foreign counterpart patents for improvements and process patents for the manufacture of these drugs and other subsequently developed BSA.

41. Bristol applied for and received foreign counterpart patents for the production or process or manufacture of certain BSA or BSAP; and in certain foreign countries Bristol obtained a product patent on Tetracycline, notwithstanding its failure to obtain such a patent in the United States.

42. As a result of obtaining the aforesaid U.S. and foreign counterpart patents and their policy not to license others to manufacture or sell these BSA, Pfizer, Cyanamid, Bristol, and Parke, Davis enjoyed a monopoly on the production and sale of these antibiotics throughout much of the world.

43. Tetracycline is the most widely used broad spectrum antibiotic. In the United States sales of Tetracycline products in 1954 amounted to about $39,500,000. In 1957 these

sales totaled approximately $114,000,000 and in 1959 the amount sold was $95,000,000.

44. BSAP are sold by Defendants to customers who are classified in the U.S. market as either retail druggists, wholesalers, private hospitals, tax-supported hospitals, or federal government agencies. All Defendants sell directly to these classifications except that Upjohn has not always sold directly to wholesalers.

45. Within the United States, prices of all BSAP remained substantially unchanged from October 1951 to at least July 1960 to the retailer, wholesaler and hospital classifications.

46. International pricing and sales policies for BSA and BSAP are coordinated and controlled by each Defendant's respective management within the United States. Sales and price policies of Defendants' overseas subsidiaries engaged in the manufacture or sale of BSA or BSAP are reviewed by each Defendant's respective management within the United States and are subject to the control of management within the United States.

47. Patent licensing agreements and bulk sales agreements between Defendants and manufacturers or sellers of BSA and BSAP outside of the United States are reviewed and approved by each Defendant's respective management within the United States. Such agreements relating to BSA and BSAP are frequently negotiated within the United States.

48. Substantial quantities of BSA and BSAP manufactured by Defendants in the United States have been

sold and shipped to customers outside of the United States, including customers in the RVN.

49. Some BSA and BSAP purchased from the Defendants by customers in the RVN may have been manufactured outside of the United States by Defendants' wholly or partially owned subsidiaries.

50. Some BSA and BSAP purchased by customers in the RVN may have been manufactured outside of the United States by licensees of Defendants. Such licensees pay or paid royalties to Defendants based upon the use of Defendants' U.S. BSA patents and their foreign counterparts. These patents include but are not limited to the foreign counterpart patents of U.S. Patent No. 2,600,054 (Conover); U.S. Patent No. 2,482,055 (Duggar); U.S. Patent No. 2,609,329 (Niedercorn); U.S. Patent No. 2,734,018 (Minieri); U.S. Patent No. 3,092,556; Reissue RE 25,840 (Growich).

VII

Background of the Conspiracy

51. In 1952 Pfizer's Terramycin product sales in the United States totaled over $39,000,000. Cyanamid's Aureomycin product sales in the United States totaled over $38,000,000. These sales amounted to approximately 78 percent of the broad spectrum product market in 1952.

52. In 1953 Pfizer's Terramycin product sales in the United States totaled over $36,500,000. Cyanamid's Aureomycin product sales in the United States were about $32,000,000. These sales amounted to approximately 92 percent of the broad spectrum product market in 1953.

53. As of November 1953, prices of the narrow spectrum antibiotics such as penicillin and streptomycin, which were not patented and were sold by numerous companies, were severely depressed. Each of the defendant companies engaged or had been engaged in the manufacture or sale of such narrow spectrum antibiotics.

54. As of November 1953, Bristol Laboratories, Inc., a then wholly owned subsidiary of Bristol (and presently an operating division thereof) was operating at a loss by reason of the continued decline in the sales price of penicillin which then constituted the major part of the total business of Bristol Laboratories, Inc.

55. As of November 1953, prices of the BSAP then on the market, all patented, were all substantially identical and non-competitive, and had all been maintained at the price level in effect on October 1, 1951.

56. As of November 1953, patent applications on Tetracycline, filed in 1953 by Pfizer, Cyanamid and Bristol severally, were pending in the Patent Office. Pfizer's pending application was a continuation of a previous application rejected by the Patent Office.

57. On September 23, 1953, Heyden Chemical Company filed an application for a patent on Tetracycline. This application was acquired by Cyanamid in December 1953 after arrangements for its acquisition had been completed in November 1953.

58. On or about October 29, 1953, Pfizer and Cyanamid were informed by the Patent Office that an interference

would probably be declared on their respective Tetracycline patent applications.

59. By October 1953, Pfizer knew that Cyanamid was interested in Tetracycline and was testing it clinically. Cyanamid also knew then that Pfizer was interested in Tetracycline.

60. As of November 1953, Pfizer and Cyanamid knew that Tetracycline was directly competitive with Terramycin and Aureomycin respectively, and that Tetracycline represented a threat to the continuation of their dominant positions and high profits in the then existing BSAP market. Pfizer and Cyanamid also knew that unless one of them could obtain a product patent on Tetracycline, prices of the BSAP could become competitive.

61. In 1954, Bristol had a very small sales force selling pharmaceuticals directly to the drug trade. Upjohn and Squibb, at such time, each had a very large sales force engaged in the direct sale of pharmaceuticals to the drug trade.

62. Prior to the introduction of Tetracycline products, Cyanamid was manufacturing and selling Aureomycin, ostensibly pursuant to coverage under the Duggar and Niedercorn patents and Cyanamid purportedly had the ability to exclude other companies from the Aureomycin market through the assertion of these patents. In applying for these patents and during the processing of these patent applications, Cyanamid did not disclose the best known mode and manner of its invention and thereby obtained these patents by knowing and willful non-compliance with

Patent Office requirements. Accordingly, there is substantial reason to believe that these patents are invalid and unenforceable.

63. Cyanamid's Growich and Minieri patent applications did not conform with Patent Office rules and standards which may render these patents invalid and unenforceable.

VIII

Violations of Law

64. Beginning in or about November 1953, the exact date being unknown to Plaintiff, the Defendants have engaged in an unlawful combination and conspiracy to restrain interstate and foreign trade and commerce in the manufacture, sale and distribution of BSA and BSAP, have combined and conspired to monopolize such interstate and foreign trade and commerce and have attempted to monopolize and monopolized such trade and commerce, in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2).

The substantial terms of the aforesaid violations have been and are that:

a. The manufacture of Tetracycline be confined to Pfizer, Cyanamid and Bristol in the United States and to a limited number of licensees abroad.

b. The sale of Tetracycline products be confined to Pfizer, Cyanamid, Bristol, Upjohn and Squibb in the United States and to a limited number of licensees abroad.

c. The sale of bulk Tetracycline be confined to Bristol and bulk Tetracycline be sold by Bristol only to Upjohn and Squibb in the United States and Defendants' bulk sales abroad would be to a limited and controlled number of customers.

d. The sale of BSAP by the defendant companies, their subsidiaries and their licensees and/or bulk customers in the United States and abroad be at substantially identical and non-competitive prices.

65. Pfizer, in addition to acting in concert with other Defendants as alleged above, unilaterally has acted to mislead or defraud the U.S. Patent Office, and has utilized its patent position, to secure for itself, and to attempt to secure for itself, a monopoly in BSA, and particularly Tetracycline, in the United States and abroad; further, Pfizer, in reliance on said patent position, has engaged in acts in restraint of domestic and foreign trade and commerce in order to obtain and exploit this monopoly, and attempted monopoly, of the broad spectrum antibiotic and Tetracycline market.

66. Cyanamid, in addition to acting in concert with other Defendants as alleged above, unilaterally has acted to mislead or defraud the U.S. Patent Office, and has utilized its patent position, to secure for itself, and to attempt to secure for itself, a monopoly in BSA, and particularly Chlortetracycline, in the United States and abroad; further, Cyanamid, in reliance on said patent position, has engaged in acts in restraint of domestic and foreign trade and commerce in order to obtain and exploit

this monopoly, and attempted monopoly, of the broad spectrum antibiotic and Chlortetracycline market.

67. The said violations have been effectuated by various means and methods including, but not limited to, those alleged in paragraphs 69 through 91 of this Complaint.

68. Cyanamid licensed Pfizer and Bristol to use its Aureomycin patent in the manufacture of Tetracycline and refused to license all other domestic and most foreign applicants.

69. Pfizer licensed Cyanamid and Bristol under its Tetracycline patent and refused to license all other domestic and most foreign applicants.

70. Cyanamid assisted and cooperated with Pfizer in obtaining for Pfizer a patent on Tetracycline.

71. Pfizer, Cyanamid and Bristol suppressed litigation involving the validity of Pfizer's Tetracycline patent.

72. Pfizer, Cyanamid and Bristol withheld pertinent and material information from the Patent Office and otherwise misled the Patent Office prior to the issuance of Pfizer's Tetracycline patent.

73. Cyanamid acquired the competing Heyden patent application on Tetracycline and abandoned the product claims therein.

74. Bristol sold bulk Tetracycline only to Upjohn and Squibb. For a substantial period of time covered by this Complaint, each of the defendant companies refused to sell bulk Tetracycline to all others except that Cyanamid sold a

large amount of bulk Tetracycline to Pfizer in early 1954 in assisting Pfizer to make a prompt entry into the Tetracycline product market.

75. Bristol entered into agreements with Upjohn and Squibb, respectively, which required Upjohn and Squibb to purchase all their requirements of bulk Tetracycline from Bristol.

76. Pfizer issued licenses to Upjohn and Squibb, respectively, limited, however, at Bristol's request, to the sale of Tetracycline products.

77. Pfizer and Cyanamid have maintained substantially identical, non-competitive prices on Terramycin products and Aureomycin products, respectively.

78. Pfizer, Cyanamid, Bristol, Upjohn and Squibb each introduced its Tetracycline products on the market at prices which were substantially identical with each other and which conformed to the non-competitive prices of Terramycin products and Aureomycin products in effect as of November 1953, and all these companies thereafter maintained such substantially identical, non-competitive prices.

79. Pfizer, Cyanamid, Bristol, Upjohn and Squibb each introduced its Tetracycline products on the market in dosage forms and customer classifications substantially identical with the Terramycin product and Aureomycin product dosage forms and customer classifications in effect as of November 1953, and have continued to use such substantially identical dosage forms and classifications.

80. Defendants have communicated with one another and advised one another both in the United States and

throughout the world with respect to current and future prices of BSAP.

81. Defendants have jointly sought to restrict or inhibit the purchase of BSA and BSAP which were not manufactured by one of the Defendants.

82. Defendants have consulted with respect to action to inhibit or foreclose the purchase of BSA and BSAP in their generic form and have jointly acted to inhibit or foreclose such purchases.

83. Defendants have jointly agreed as to which patents on BSA and BSAP would be maintained on a worldwide (country-by-country) basis.

84. Defendants have advised and consulted with each other with respect to which of them would bring patent infringement actions or threaten such actions and under which patent relating to BSAP such legal action or threat of legal action would be based in order to prevent the sale of BSA or BSAP by companies other than the Defendants or their licensees.

85. Defendants have threatened to bring and have brought legal actions to prevent the sale of BSA or BSAP by persons other than Defendants or their licensees notwithstanding Defendants' knowledge that patents relied upon in such lawsuits were fraudulently obtained or were being misused.

86. Defendants have entered into understandings, express or implicit, among themselves and their licensees that certain Defendants or certain of their licensees would not compete in some markets or areas of the world.

87. Defendants have established or attempted to establish worldwide or area prices concerning and governing the sale of BSAP.

88. Defendants have knowingly disparaged the quality of competitive product and have sought to convince prospective customers that competitive BSAP were inferior notwithstanding Defendants' knowledge of the falsity of such assertions or statements.

89. Defendants have purchased or attempted to purchase additional fermentation capacity or entered into bulk purchase contracts with other fermenters thus giving them control over competitive fermentation capacity for BSA and BSAP.

90. Defendants have sold BSA and BSAP on the express or implicit understanding that such products would not be re-exported in any form outside of the country in which they were originally sold.

IX

Effects of the Violations

91. The violations hereinbefore alleged have had the following effects on interstate and foreign commerce, among others:

a. The RVN and its political subdivisions, individual consumers, hospitals and clinics, retailers, wholesalers and importers in the RVN, have all been deprived of the benefits of competition and have been compelled to pay high, non-competitive prices for BSA and BSAP.

b. The RVN has been deprived of vital foreign exchange reserves because excessive amounts of foreign exchange have been required not only to pay for BSA and BSAP at the non-competitive prices charged by Defendants or their licensees but also to enable Defendants or their licensees to make remittances from the RVN, in United States dollars or other foreign currencies, of their profits resulting from sales in the RVN of BSA and BSAP at the non-competitive prices charged by them.

c. Pfizer and Cyanamid have been able to maintain unchanged for prolonged periods their substantially identical, non-competitive, high prices of Terramycin products and Aureomycin products without any price competition from Tetracycline products.

d. Pfizer, Cyanamid, Bristol, Upjohn and Squibb have been able to maintain unchanged for prolonged periods substantially identical, non-competitive, high prices of all BSA and BSAP sold by them, and price competition in the sale and distribution of BSA and BSAP has been prevented and suppressed.

e. Pfizer, Cyanamid, and Bristol, Squibb and Upjohn have been able to make non-competitive, high profits from sale of their BSAP.

f. Bristol has been able to make non-competitive, high profits in the sale of bulk Tetracycline.

g. A judicial determination of the validity of Pfizer's Tetracycline patent has been prevented.

h. Introduction of improved forms and methods of administration of BSA by other companies has been restricted and prevented, and research in this field has been hampered.

i. Pharmaceutical companies other than the defendant companies desiring to engage in the manufacture or sale of BSA or BSAP have been prevented and precluded from doing so.

j. Other producers and sellers of BSA and BSAP have been precluded from effectively competing in the RVN.

X

Judgments in Governmental Proceedings

92. On July 28, 1958, the Federal Trade Commission issued a Complaint against Pfizer, Bristol, Cyanamid, Squibb and Upjohn, charging, *inter alia*, that Pfizer made false, misleading and incorrect statements to, and withheld material information from, the United States Patent Office for the purpose and with the effect of inducing the issuance of a patent on Tetracycline. *In the Matter of American Cyanamid Co., et al.*, F.T.C. Docket No. 7211. The Complaint also alleged that Bristol and Cyanamid withheld from the Patent Office material information in the course of the prosecution of patent applications, as a result of which Pfizer was aided in obtaining its Tetracycline patent. It was further alleged that Cyanamid, Bristol, Squibb and Upjohn solicited and accepted licenses from Pfizer under the Tetracycline patent, knowing that material information

had been withheld from the Patent Office by one or more of the Defendants. The Complaint further alleged that all five Defendants conspired and combined to fix and maintain prices of BSA, including Tetracycline. On September 29, 1967, the Federal Trade Commission found that Pfizer had obtained the Tetracycline patent by material misrepresentation to, and withholding pertinent information from, the Patent Office; that Pfizer had attempted to monopolize Tetracycline; and that Cyanamid had also withheld material information from the Patent Office in connection with the issuance of the Tetracycline patent. The Commission found that Pfizer's conduct violated Section 2 of the Sherman Act and was therefore a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The Commission further found that Cyanamid's conduct also violated Section 5 of the Federal Trade Commission Act. The Commission issued a final order directing Pfizer and Cyanamid to make licenses under their patents on Tetracycline and Aureomycin available to all other domestic companies on a specified royalty basis. On September 30, 1968, the United States Court of Appeals for the Sixth Circuit affirmed the decision and order of the Federal Trade Commission. *Charles Pfizer & Co.* v. *F.T.C.*, 401 F.2d 574 (6th Cir. 1968). Plaintiff's action is based in part upon the matters complained of and determined in this proceeding.

93. On August 17, 1961, the United States of America instituted a criminal prosecution, 61 Cr. 772, in the United States District Court for the Southern District of New York, naming Pfizer, Cyanamid and Bristol as defendants, and Squibb and Upjohn as co-conspirators. The three-

count indictment alleged the same combination and conspiracy to restrain trade and to monopolize and monopolization which are the subject matter of the present action. On December 29, 1967, after a jury trial, defendants Pfizer, Cyanamid and Bristol were each found guilty of each of the violations charged. Judgments of conviction were entered and maximum fines imposed on February 28, 1968. On January 28, 1972, an equally divided Supreme Court affirmed an order of the Second Circuit, 437 F.2d 957, affirming 426 F.2d 32, that a new trial was required due to errors in the jury charge delivered by the District Court. Plaintiff's action is based in part upon the matters charged in this proceeding.

XI

Fraudulent Concealment

94. Plaintiff had no knowledge of the violations alleged herein or of the facts which might have led to the discovery of the violations, until after the institution of the litigation referred to in paragraphs 92 and 93. Plaintiff could not have discovered the said antitrust violations at an earlier date by the exercise of due diligence, inasmuch as said antitrust violations had been fraudulently concealed from their inception by the Defendants by various means and methods used to avoid the detection thereof. Said fraudulent concealment consisted in part of the following acts: misrepresenting material facts and withholding pertinent information from the Patent Office; tightly controlling the dissemination of documents containing relevant data and subsequently destroying these documents.

95. During the pendency of the litigation referred to in paragraphs 92 and 93 and the fraudulent concealment referred to in paragraph 94, the statute of limitations applicable to the instant action (Clayton Act, Section 4(b), 15 U.S.C. § 15(b)) has been and continues to be suspended as provided by statute and otherwise. Clayton Act, Section 5(b), 15 U.S.C. § 16(b).

XII

Injury to Plaintiff

96. During the period of the Defendants' violations of the Sherman Act, Plaintiff and other members of the classes represented by Plaintiff purchased BSA and BSAP from the Defendants and others. By reason of said violations, Plaintiff and other members of the classes represented by Plaintiff have been denied the benefits of unrestricted competition, and have paid more for BSA and BSAP than they would have paid had Defendants' violations not existed. As a result, Plaintiff and other members of the class it represents have been injured and damaged in their business or property by Defendants in an amount which presently is undetermined.

PRAYER

Wherefore, Plaintiff prays that:

(1) this Court adjudge and decree that the Defendants, and each of them, have combined and conspired to restrain and monopolize interstate and foreign trade and commerce in the manufacture, distribution and sale of BSA and

BSAP; have each of them restrained such trade and commerce; and have monopolized and attempted to monopolize such trade and commerce, as hereinbefore alleged, in violation of Sections 1 and 2 of the Sherman Act;

(2) judgment be entered in favor of Plaintiff and the classes represented by Plaintiff against the Defendants, jointly and severally, for the injury and damage caused by Defendants in an amount threefold the actual damages sustained with interest thereon;

(3) this Court allow, and Defendants be required to pay, jointly and severally, the full costs of this suit, including as part thereof a reasonable fee for the services of Plaintiff's attorneys; and

(4) Plaintiff be granted such other, further, and different relief as the nature of the case may require and as may seem just and appropriate to this Court.

Kirkwood, Kaplan, Russin & Vecchi
Counsel for Plaintiff
1218 Sixteenth Street N.W.
Washington, D. C. 20036
(202) 638-0060

by /s/ Lawrence R. Velvel
Lawrence R. Velvel

JURY DEMAND

Please take notice that Plaintiff demands a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure of all issues triable of right by a jury.

Amended Complaint of the Republic of the Philippines, dated Dec. 14, 1973, including Further Amendment, dated Jan. 8, 1974, as filed on April 11, 1974.

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

4-71 Civ. 435
D. of Minnesota
[Dist. of Columbia
Civil Action No. 650-72]

(A. Complaint for Damages and Injunctive Relief Under the Antitrust Laws)

THE REPUBLIC OF THE PHILIPPINES BY AND THROUGH THE CENTRAL BANK OF THE PHILIPPINES,

Plaintiff,

v.

PFIZER, INC.; AMERICAN CYANAMID COMPANY; BRISTOL-MYERS COMPANY; SQUIBB, INC.; E. R. SQUIBB AND SONS, INC.; OLIN CORP.; AND THE UPJOHN COMPANY,

Defendants.

JOSEPH B. FRIEDMAN
1028 Connecticut Avenue, N.W.
Washington, D.C. 20006

EPHRAIM JACOBS
DOUGLAS V. RIGLER
HOLLABAUGH & JACOBS
910-17th Street, N.W.
Washington, D.C. 20006
202-296-5121

Amended Complaint

Plaintiff, the Republic of the Philippines, its departments, agencies, commissions, institutions, instrumentalities and political subdivisions brings this complaint for itself by and

through the Central Bank of the Philippines and on behalf of a class consisting of all hospitals and clinics in the Philippines, both government and private, and on behalf of a class consisting of all individual consumers who purchased broad spectrum antibiotics and broad spectrum antibiotic products, to recover treble damages and to obtain injunctive relief due to the defendants' violations of the antitrust laws relating to the foreign and interstate commerce of the United States and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§15, 26) to obtain injunctive relief and to recover threefold the damages which the plaintiff and the classes it represents have sustained due to the violations by the defendants of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1 and 2) plus costs of suit and reasonable attorneys' fee.

2. Each defendant maintains an office, transacts business, is found, or has an agent within this district.

II.

DESCRIPTION OF THE ACTION

3. Plaintiff brings this action:

a. For itself, its departments, agencies, commissions, institutions, instrumentalities and political subdivisions.

b. As representative of a class consisting of all hospitals and clinics throughout the Philippines which purchase broad spectrum antibiotics and BSA products. There are numerous hospitals and clinics throughout the Philippines, some of which are government owned and operated; others of which are privately owned or operated in whole or in part. The class of hospitals is so numerous the joinder of all members is impracticable; there are questions of law or fact common to the class; the claims of the plaintiff are typical of the claims of the members of this class; and plaintiff will fairly and adequately protect the interests of the class.

c. As representative of a class consisting of all individual consumers in the Philippines who purchased broad spectrum antibiotics and broad spectrum antibiotic products. The consumer class is so numerous that the joinder of all members is impracticable; there are questions of law or fact common to the class; the claims of the plaintiff are typical of the claims of the members of this class; and plaintiff will fairly and adequately protect the interests of the class.

III.

Definitions

4. As used herein:

a. The term "antibiotics" means chemical substances produced by a micro-organism, or by chemical synthesis, which have the capacity to inhibit the

growth of other harmful micro-organisms or to destroy them.

b. The term "broad spectrum antibiotics" (sometimes herein referred to as BSA) means antibiotics which are effective against a wide range of harmful micro-organisms, including gram positive and gram negative pathogenic micro-organisms, rickettsiae, viruses, spirochetes and protozoa. BSA includes tetracycline, chlortetracyline, oxytetracyline, doxycycline, minocycline, demeclocycline, methacycline.

c. The term "Tetracycline" means the generic name of the broad spectrum antibiotic whose chemical name and structure are 4-dimethylamino—1, 4, 4a, 5, 5a, 6, 11, 12a—octahydro—3, 6, 10, 12, 12a—pentahydroxy—6 methyl—1, 11—dioxo—2 napthhacene carboxamide and salts, hydrates, esters, complexes, and analogs thereof.

d. The term "Aureomycin" means the brand name of the broad spectrum antibiotic manufactured and sold by Cyanamid whose generic name is chlortetracycline, and salts and analogs thereof.

e. The term "Terramycin" means the brand name of the broad spectrum antibiotic manufactured and sold by Pfizer, whose generic name is oxytetracycline, and salts and analogs thereof.

f. The term "Chloromycetin" means the brand name of the broad spectrum antibiotic manufactured and sold by Parke, Davis & Co., whose generic name is chloramphenicol.

g. The term "Products" shall mean any product in the form in which it is sold to retail and wholesale sellers of drugs, hospital, surgical and dental supply houses, doctors, dentists, hospitals, clinics, and government agencies and government institutions, or any one of them. "BSAP" as hereinafter sometimes used shall mean broad spectrum antibiotic products.

h. The term "bulk form" means the chemical form in which a pharmaceutical product is manufactured but which requires packaging in dosage form so as to render it suitable for sale to the drug trade and dispensing to the ultimate consumer.

IV.

The Parties

5. The Republic of the Philippines is the sovereign and independent government of the people of the Philippines. Through its various departments, bureaus, agencies, commissions, institutions, instrumentalities and political subdivisions, it has purchased substantial quantities of broad spectrum antibiotics and BSA products during the period in suit. The Central Bank of the Philippines is a government agency created by Republic Act No. 265, approved June 15, 1948.

6. Defendant Pfizer, Inc. (hereinafter "Pfizer") is a corporation organized and existing under the laws of the State of Delaware with principal offices located in New York, New York. Pfizer is the successor to and was formerly known as and transacted business under the name of Chas. Pfizer & Co., Inc. Pfizer is and was engaged in

the manufacture, sale, and distribution of various drug products including broad spectrum antibiotics and BSAP, which business is conducted in the United States and throughout the world including the Republic of the Philippines. In its international manufacturing and sales activities, Pfizer sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

7. Defendant American Cyanamid Company (hereinafter "Cyanamid") is a corporation organized and existing under the laws of the State of Maine with principal offices located in New York, New York. Cyanamid is and was engaged in the manufacture, sale, and distribution of various drug products, including broad spectrum antibiotics and BSAP which business is conducted in the United States and throughout the world including the Republic of the Philippines. In its international manufacturing and sale activities, Cyanamid sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

8. Defendant Bristol-Myers is a corporation organized and existing under the laws of the State of Delaware whose principal offices are located in New York, New York. The activities of Bristol-Myers in the pharmaceutical field are carried on by Bristol Laboratories Division. Prior to December 1959, the business and assets of the Bristol Laboratories Division were operated as a wholly owned subsidiary of Bristol-Myers Company. Defendant Bristol-Myers Company and Bristol Laboratories, Inc. are hereinafter severally and jointly referred to as "Bristol" unless

otherwise indicated. Bristol is and was engaged in the manufacture, sale, and distribution of various drug products including broad spectrum antibiotics and BSAP, which business is conducted in the United States and throughout the world including the Republic of the Philippines. In its international manufacturing and sales activities, Bristol sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

9. Defendant Upjohn Company (hereinafter "Upjohn") is a corporation organized and existing under the laws of the State of Michigan with principal offices located in Kalamazoo, Michigan. Upjohn was and is engaged in the manufacture, sale, and distribution of various drug products including broad spectrum antibiotics and BSAP which business is conducted in the United States and throughout the world including the Republic of the Philippines. In its international manufacturing and sales activities, Upjohn sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

10. Olin Corporation is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal offices located in New York, New York. Olin is the successor to and formerly was known as and transacted business under the name Olin Mathieson Chemical Corporation. Until approximately January 1968, Olin was engaged in the manufacture, sale, and distribution of various drug products including broad spectrum antibiotics, which business was conducted in the United States and throughout the world including the Republic of the Philippines. In its international manufacturing and sales

activities, Olin sometimes operated and conducted business through wholly or substantially owned foreign or domestic subsidiaries.

11. Squibb, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal offices and place of business located at 460 Park Avenue, New York, New York.

12. E. R. Squibb & Sons, Inc. (sometimes hereinafter referred to as "Squibb") is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of busines located in New York, New York. E. R. Squibb & Sons, Inc. is a wholly owned subsidiary of Squibb, Inc. and is engaged in the manufacture, sale, and distribution of various drug products including broad spectrum antibiotics and BSA products in the United States and throughout the world including the Republic of the Philippines. Prior to approximately January 1, 1966, the business and assets of E. R. Squibb & Sons, Inc. were operated as the Squibb Division of the defendant Olin. Effective Janaury 1, 1966, Olin transferred all assets and liabilities relating to its pharmaceutical operations to E. R. Squibb & Sons, Inc., a wholly owned subsidiary. In September 1967, Olin and Beech-Nut Life Savers, Inc. ("Beech-Nut") agreed upon a merger of E. R. Squibb & Sons, Inc. and Beech-Nut. In anticipation of the merger, Olin transferred all the capital stock of its subsidiary E. R. Squibb & Sons, Inc. in exchange for all of the stock of Squibb, Inc., a corporation newly organized for purposes of effectuating the merger. Immediately prior to the merger, Olin distributed its entire interest in Squibb, Inc. to

Olin's stockholders on a pro rata basis. On January 15, 1968 Beech-Nut was merged into Squibb Enterprises, Inc., a wholly-owned subsidiary of Squibb, Inc. and the stockholders of Beech-Nut received shares of Squibb, Inc. in exchange for their stock. The name of Squibb, Inc. was changed to Squibb Beech-Nut, Inc., which on April 30, 1971, changed its name to Squibb, Inc. Squibb, Inc. operates through four major subsidiaries; E. R. Squibb & Sons, Inc.; Beech-Nut, Inc.; Dobbs House, Inc.; and Lanvin-Charles of the Ritz, Inc. As a result of these transactions, the assets formerly held by E. R. Squibb & Sons, Inc., the Olin subsidiary, are now held by the defendant E. R. Squibb & Sons, Inc., which is a newly organized, wholly owned subsidiary of Squibb, Inc. In its international manufacturing and sales activities, Squibb sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

V.

Nature of Trade and Commerce

13. Broad spectrum antibiotics are widely used by the medical profession in the treatment of human infectious diseases. They are effective against a wide range of infectious diseases.

14. During most of the period covered by this complaint, the broad spectrum antibiotics market consisted of a) Aureomycin, b) Terramycin, c) Tetracycline, and d) Chloromycetin. All four are effective against substantially the same range of pathogenic micro-organisms and are substantially interchangeable in medical use. Aureomycin,

Terramycin, and Chloromycetin have closely similar molecular structures.

15. The first broad spectrum antibiotic sold in the United States was chlortetracycline. Since December 1948, Cyanamid has marketed this product under the trade name "Aureomycin". On September 14, 1949, Cyanamid, as the assignee of the Duggar application, received U.S. Patent No. 2,482,055 on "Aureomycin and the preparation of same." On September 2, 1952, Cyanamid as the assignee of the Niedercorn application, received U.S. Patent No. 2,609,329, which was an improvement patent on the process for producing Aureomycin.

16. On October 4, 1949, Parke, Davis & Co. received U.S. Patent No. 2,483,885 on the broad spectrum antibiotic chloramphenicol; and since 1949 it has marketed the product under the trade name Choloromycetin.

17. On July 18, 1950, Pfizer received U.S. Patent No. 2,516,080 on the broad spectrum antibiotic oxytetracycline; and since 1950 it has marketed the product under the trade name of Terramycin.

18. On January 11, 1955, Pfizer, as assignee of the Conover application, received U.S. Patent No. 2,699,054 on the broad spectrum antibiotic Tetracycline.

19. Tetracycline is manufactured by one of two principal methods: 1) a process which subjects chlortetracycline to hydrogenation in the presence of a catalyst which removes the chlorine atom from the molecule, and 2) by a direct fermentation process. At the outset of their manufacture of Tetracycline and for a substantial period of time

thereafter, Pfizer and Cyanamid used the hydrogenation process while Bristol used the direct fermentation process.

20. During much of the period covered by this complaint, Tetracycline was manufactured only by Pfizer, Cyanamid, and Bristol. In the United States, Tetracycline was not manufactured by any manufacturer other than Pfizer, Cyanamid, and Bristol until late in 1962.

21. Cyanamid has been licensed by Pfizer to manufacture and sell Tetracycline since the issuance of the Conover patent on January 11, 1955. Bristol has been licensed by Pfizer to manufacture and sell Tetracycline since March 28, 1956. Upjohn and Squibb have been licensed to sell some Tetracycline products since March 28, 1956, pursuant to the terms of an agreement between each of them and Pfizer.

22. For a substantial portion of the time covered by this complaint, Tetracycline products were sold in the U.S. and abroad only by Pfizer, Cyanamid, Bristol, Upjohn, and Squibb. Cyanamid commenced selling Tetracycline products in November 1953; Pfizer, in January 1954; Bristol, in April 1954; Squibb, in September 1954; and Upjohn, in October 1954.

23. For many years commencing in 1954, Upjohn and Squibb purchased all their bulk Tetracycline from Bristol, which, for a substantial period of time covered by this complaint, was the only seller of bulk Tetracycline.

24. Each of the defendant companies sells Tetracycline products under its own brand or trade name. All use substantially identical dosage forms. The introductory brand names used by defendants for their Tetracycline products

were Cyanamid's "Achromycin"; Pfizer's "Tetracyn"; Bristol's "Polycycline"; Squibb's "Steclin"; and Upjohn's "Panmycin".

25. Cyanamid did not license anyone to manufacture and sell Chlortetracycline in the U.S., and for many years it limited its licenses abroad to its subsidiary companies.

26. Pfizer did not license anyone to manufacture and sell oxytetracycline in the U.S. and limited its licenses abroad to its subsidiary companies.

27. Parke-Davis & Co. did not license anyone to manufacture and sell chloramphenicol in the U.S. and limited its licenses abroad to its subsidiary companies.

28. As a result, Cyanamid, Pfizer, and Parke-Davis enjoyed a monopoly on the production and sale of their respective broad spectrum antibiotics in the United States.

29. Cyanamid and Pfizer each applied for and obtained foreign counterpart patents for chlortetracycline and oxytetracycline respectively and Pfizer for tetracycline and each company sought and received many foreign counterpart patents for improvements and process patents for the manufacture of these drugs and other subsequently developed BSAs.

30. Bristol applied for and received foreign counterpart patents for the production or process of manufacture of certain broad spectrum antibiotics or BSA products; and in certain foreign countries Bristol obtained a product patent on Tetracycline, notwithstanding its failure to obtain such a patent in the United States.

31. As a result of obtaining the aforesaid U.S. and foreign counterpart patents and their policy not to license others to manufacture or sell these broad spectrum antibiotics, Pfizer, Cyanamid, Bristol, and Parke-Davis enjoyed a monopoly on the production and sale of these antibiotics throughout much of the world.

32. Tetracycline is the most widely used broad spectrum antibiotic. In the United States sales of Tetracycline products in 1954 amounted to about $39,500,000. In 1957 these sales totaled approximately $114,000,000 and in 1959 the amount sold was $95,000,000.

33. Broad spectrum antibiotic products are sold by defendants to customers who are classified in the U.S. market as either retail druggists, wholesalers, private hospitals, tax-supported hospitals, or federal government agencies. All defendants sell directly to these classifications except that Upjohn has not always sold directly to wholesalers.

34. Within the United States, prices of all broad spectrum antibiotic products remained substantially unchanged from October 1951 to at least July 1960 to the retailer, wholesaler, and hospital classifications.

35. International pricing and sales policies for broad spectrum antibiotics and BSA products are coordinated and controlled by each defendant's respective management within the United States. Sales and price policies of defendants' overseas subsidiaries engaged in the manufacture or sale of broad spectrum antibiotics or BSA products are reviewed by each defendant's respective management within the United States and are subject to the control of management within the United States.

36. Patent licensing agreements and bulk sales agreements between defendants and manufacturers or sellers of broad spectrum antibiotics and BSA products outside of the United States are reviewed and approved by each defendant's respective management within the United States. Such agreements relating to broad spectrum antibiotics and BSAP are frequently negotiated within the United States.

37. Substantial quantities of broad spectrum antibiotics and BSAP manufactured by defendants in the United States have been sold and shipped to customers outside of the United States, including customers in the Philippines.

38. Some broad spectrum antibiotics and BSAP purchased from the defendants by customers in the Philippines may have been manufactured outside of the United States by defendants' wholly or partially owned subsidiaries.

39. Some broad spectrum antibiotics and BSAP purchased by customers in the Philippines may have been manufactured outside of the United States by licensees of defendants. Such licensees pay or paid royalties to defendants based upon the use of defendants' U.S. broad spectrum antibiotics patents and their foreign counterparts. These patents include but are not limited to the foreign counterpart patents of U.S. Patent No. 2,600,054 (Conover); U.S. Patent No. 2,482,055 (Duggar); U.S. Patent No. 2,609,329 (Niedercorn); U.S. Patent No. 2,734,018 (Minieri); U.S. Patent No. 3,092,556; Reissue RE 25,840 (Growich).

VI.

BACKGROUND OF THE CONSPIRACY

40. In 1952 Pfizer's Terramycin product sales in the United States totaled over $39,000,000. Cyanamid's Aureomycin product sales in the United States totaled over $38,000,000. These sales amounted to approximately 78 percent of the broad spectrum product market in 1952.

41. In 1953 Pfizer's Terramycin product sales in the United States totaled over $36,500,000. Cyanamid's Aureomycin product sales in the United States were about $32,000,000. These sales amounted to approximately 92 percent of the broad spectrum product market in 1953.

42. As of November 1953, prices of the narrow spectrum antibiotics such as penicillin and streptomycin, which were not patented and were sold by numerous companies, were severely depressed. Each of the defendant companies engaged or had been engaged in the manufacture or sale of such narrow spectrum antibiotics.

43. As of November 1953, Bristol Laboratories, Inc., a then wholly owned subsidiary of Bristol (and presently an operating division thereof) was operating at a loss by reason of the continued decline in the sales price of penicillin which then constituted the major part of the total business of Bristol Laboratories, Inc.

44. As of November 1953, prices of the broad spectrum antibiotic products then on the market, all patented, were all substantially identical and non-competitive, and had all been maintained at the price level in effect on October 1, 1951.

45. As of November 1953 patent application on Tetracycline, filed in 1953 by Pfizer, Cyanamid and Bristol severally, were pending in the Patent Office. Pfizer's pending application was a continuation of a previous application rejected by the Patent Office.

46. On September 23, 1953, Heyden Chemical Company filed an application for a patent on Tetracycline. This application was acquired by Cyanamid in December 1953 after arrangements for its acquisition had been completed in November 1953.

47. On or about October 29, 1953, Pfizer and Cyanamid were informed by the Patent Office that an interference would probably be declared on their respective Tetracycline patent applications.

48. By October 1953, Pfizer knew that Cyanamid was interested in Tetracycline and was testing it clinically. Cyanamid also knew then that Pfizer was interested in Tetracycline.

49. As of November 1953, Pfizer and Cyanamid knew that Tetracycline was directly competitive with Terramycin and Aureomycin respectively, and that Tetracycline represented a threat to the continuation of their dominant positions and high profits in the then existing broad spectrum antibiotic products market. Pfizer and Cyanamid also knew that unless one of them could obtain a product patent on Tetracycline, prices of the broad spectrum antibiotic products could become competitive.

50. In 1954, Bristol had a very small sales force selling pharmaceuticals directly to the drug trade. Upjohn and

Squibb, at such time, each had a very large sales force engaged in the direct sale of pharmaceuticals to the drug trade.

50(A). Prior to the introduction of tetracycline products, Cyanamid was manufacturing and selling aureomycin, ostensibly pursuant to coverage under the Duggar and Niedercorn patents and Cyanamid purportedly had the ability to exclude other companies from the aureomycin market through the assertion of these patents. In applying for these patents and during the processing of these patent applications, Cyanamid did not disclose the best known mode and manner of its invention and thereby obtained these patents by knowing and willful non-compliance with patent office requirements. Accordingly, there is substantial reason to believe that these patents are invalid and unenforceable.

50(B). Cyanamid's Growich and Minieri patent applications did not conform with patent office rules and standards which may render these patents invalid and unenforceable.

VII.

Violations of Law

51. Beginning in or about November 1953, the exact date being unknown to plaintiff, the defendants have engaged in an unlawful combination and conspiracy to restrain interstate and foreign trade and commerce in the manufacture, sale, and distribution of broad spectrum antibiotics and BSA products, have combined and conspired to monopolize such interstate and foreign trade and commerce and

have attempted to monopolize such trade and commerce, in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2).

The substantial terms of the aforesaid violations have been and are that:

(a) The manufacture of Tetracycline be confined to Pfizer, Cyanamid, and Bristol in the United States and to a limited number of licensees abroad.

(b) The sale of Tetracycline Products be confined to Pfizer, Cyanamid, Bristol, Upjohn, and Squibb in the United States and to a limited number of licensees abroad.

(c) The sale of bulk Tetracycline be confined to Bristol and bulk Tetracycline be sold by Bristol only to Upjohn and Squibb in the United States and defendants' bulk sales abroad would be to a limited and controlled number of customers.

(d) The sale of broad spectrum antibiotic products by the defendant companies, their subsidiaries, and their licensees and/or bulk customers in the United States and abroad be at substantially identical and non-competitive prices.

52. The said violations have been effectuated by various means and methods including, but not limited to, those alleged in paragraphs 53 through 75 of this complaint.

53. Cyanamid licensed Pfizer and Bristol to use its Aureomycin patent in the manufacture of Tetracycline and refused to license all other domestic and most foreign applicants.

54. Pfizer licensed Cyanamid and Bristol under its Tetracycline patent and refused to license all other domestic and most foreign applicants.

55. Cyanamid assisted and cooperated with Pfizer in obtaining for Pfizer a patent on Tetracycline.

56. Pfizer, Cyanamid and Bristol suppressed litigation involving the validity of Pfizer's Tetracycline patent.

57. Pfizer, Cyanamid and Bristol withheld pertinent and material information from the Patent Office and otherwise misled the Patent Office prior to the issuance of Pfizer's Tetracycline patent.

58. Cyanamid acquired the competing Heyden patent application on Tetracycline and abandoned the product claims therein.

59. Bristol sold bulk Tetracycline only to Upjohn and Squibb. For a substantial period of time covered by this complaint, each of the defendant companies refused to sell bulk Tetracycline to all others except that Cyanamid sold a large amount of bulk Tetracycline to Pfizer in early 1954 in assisting Pfizer to make a prompt entry into the Tetracycline product market.

60. Bristol entered into agreements with Upjohn and Squibb, respectively, which required Upjohn and Squibb to purchase all their requirements of bulk Tetracycline from Bristol.

61. Pfizer issued licenses to Upjohn and Squibb, respectively, limited, however, at Bristol's request, to the sale of Tetracycline products.

62. Pfizer and Cyanamid have maintained substantially identical, non-competitive prices on Terramycin products and Aureomycin products, respectively.

63. Pfizer, Cyanamid, Bristol, Upjohn and Squibb each introduced its Tetracycline products on the market at prices which were substantially identical with each other and which conformed to the non-competitive prices of Terramycin products and Aureomycin products in effect as of November 1953, and all these companies thereafter maintained such substantially identical, non-competitive prices.

64. Pfizer, Cyanamid, Bristol, Upjohn and Squibb each introduced its Tetracycline products on the market in dosage forms and customer classifications substantially identical with the Terramycin product and Aureomycin product dosage forms and customer classifications in effect as of November 1953, and have continued to use such substantially identical dosage forms and classifications.

65. Defendants have communicated with one another and advised one another both in the United States and throughout the world with respect to current and future prices of broad spectrum antibiotic products.

66. Defendants have jointly sought to restrict or inhibit the purchase of broad spectrum antibiotics and broad spectrum antibiotic products which were not manufactured by one of the defendants.

67. Defendants have consulted with respect to action to inhibit or foreclose the purchase of broad spectrum antibiotics and BSA products in their generic form and have jointly acted to inhibit or foreclose such purchases.

68. Defendants have jointly agreed as to which patents on broad spectrum antibiotics and broad spectrum antibiotic products would be maintained on a worldwide (country-by-country) basis.

69. Defendants have advised and consulted with each other with respect to which of them would bring patent infringement actions or threaten such actions and under which patent relating to broad spectrum antibiotic products such legal action or threat of legal action would be based in order to prevent the sale of broad spectrum antibiotics or broad spectrum antibiotic products by companies other than the defendants or their licensees.

70. Defendants have threatened to bring and have brought legal actions to prevent the sale of broad spectrum antibiotics or BSA products by persons other than defendants or their licensees notwithstanding defendants' knowledge that patents relied upon in such law suits were fraudulently obtained or were being misused.

71. Defendants have entered into understandings, express or implicit, among themselves and their licensees that certain defendants or certain of their licensees would not compete in some markets or areas of the world.

72. Defendants have established or attempted to establish worldwide or area prices concerning and governing the sale of broad spectrum antibiotic products.

73. Defendants have knowingly disparaged the quality of competitive products and have sought to convince prospective customers that competitive broad spectrum antibiotic products were inferior notwithstanding defendants' knowledge of the falsity of such assertions or statements.

74. Defendants have purchased or attempted to purchase additional fermentation capacity or entered into bulk purchase contracts with other fermentors thus giving them control over competitive fermentation capacity for broad spectrum antibiotics and BSA products.

75. Defendants have sold broad spectrum antibiotics and BSA products on the express or implicit understanding that such products would not be re-exported in any form outside of the country in which they were originally sold.

VIII.

Effects of the Violations

76. The violations hereinbefore alleged have had the following effects on interstate and foreign commerce, among others:

(a) The Republic of the Philippines, individual consumers, and private and government-supported hospitals in the Philippines have been deprived of the benefits of competition and have been compelled to pay high, non-competitive prices for broad spectrum antibiotics and BSA products.

(b) The Republic of the Philippines has been deprived of vital foreign exchange reserves because excessive amounts of foreign exchange have been required not only to pay for BSA and BSAP at the non-competitive prices charged by defendants or their licensees but also to enable defendants or their licensees to make remittances from the Philippines, in United States dollars or other foreign cur-

rencies, of their profits resulting from sales in the Philippines of BSA and BSAP at the non-competitive prices charged by them.

(c) Pfizer and Cyanamid have been able to maintain unchanged for prolonged periods their substantially identical, non-competitive, high prices of Terramycin products and Aureomycin products without any price competition from Tetracycline products.

(d) Pfizer, Cyanamid, Bristol, Upjohn and Squibb have been able to maintain unchanged for prolonged periods substantially identical, non-competitive, high prices of all BSA's and BSA products sold by them, and price competition in the sale and distribution of broad spectrum antibiotics and BSA products has been prevented and suppressed.

(e) Pfizer, Cyanamid, and Bristol, Squibb and Upjohn have been able to make non-competitive, high profits from the sale of their broad spectrum antibiotic products.

(f) Bristol has been able to make non-competitive, high profits in the sale of bulk Tetracycline.

(g) A judicial determination of the validity of Pfizer's Tetracycline patent has been prevented.

(h) Introduction of improved forms and methods of administration of broad spectrum antibiotics by other companies has been restricted and prevented and research in this field has been hampered.

(i) Pharmaceutical companies other than the defendant companies desiring to engage in the manufacture or sale of broad spectrum antibiotics or BSA products have been prevented and precluded from doing so.

(j) Other producers and sellers of broad spectrum antibiotics and BSA products have been precluded from effectively competing in the Philippines.

IX.

Judgments in Governmental Proceedings

77. On July 28, 1958, the Federal Trade Commission issued a Complaint against Pfizer, Bristol, Cyanamid, Squibb and Upjohn, charging, *inter alia*, that Pfizer made false, misleading and incorrect statements to, and withheld material information from, the United States Patent Office for the purpose and with the effect of inducing the issuance of a patent on Tetracycline. *In the Matter of American Cyanamid Co. et al.*, F.T.C. Docket No. 7211. The Complaint also alleged that Bristol and Cyanamid withheld from the Patent Office material information in the course of the prosecution of patent applications, as a result of which Pfizer was aided in obtaining its Tetracycline patent. It was further alleged that Cyanamid, Bristol, Squibb and Upjohn solicited and accepted licenses from Pfizer under the Tetracycline patent, knowing that material information had been withheld from the Patent Office by one or more of the defendants. The Complaint further alleged that all five defendants conspired and combined to fix and maintain prices of broad spectrum antibiotics, including Tetracy-

cline. On September 29, 1967, the Federal Trade Commission found that Pfizer had obtained the Tetracycline patent by material misrepresentation to, and withholding pertinent information from, the Patent Office; that Pfizer had attempted to monopolize Tetracycline; and that Cyanamid had also withheld material information from the Patent Office in connection with the issuance of the Tetracycline patent. The Commission found that Pfizer's conduct violated Section 2 of the Sherman Act and was therefore a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The Commission further found that Cyanamid's conduct also violated Section 5 of the Federal Trade Commission Act. The Commission issued a final order directing Pfizer and Cyanamid to make licenses under their patents on Tetracycline and Aureomycin available to all other domestic companies on a specified royalty basis. On September 30, 1968, the United States Court of Appeals for the Sixth Circuit affirmed the decision and order of the Federal Trade Commission. *Charles Pfizer & Co.* v. *F.T.C.*, 401 F.2d 574 (6th Cir. 1968). Plaintiff's action is based in part upon the matters complained of and determined in this proceeding.

78. On August 17, 1961, the United States of America instituted a criminal prosecution, 61 Cr. 772, in the United States District Court for the Southern District of New York, naming Pfizer, Cyanamid and Bristol as defendants, and Squibb and Upjohn as co-conspirators. The three-count indictment alleged the same combination and conspiracy to restrain trade and to monopolize and monopolization which are the subject matter of the present action. On December

29, 1967, after a jury trial, defendants Pfizer, Cyanamid and Bristol were each found guilty of each of the violations charged. Judgments of conviction were entered and maximum fines imposed on February 28, 1968. On January 28, 1972, an equally divided Supreme Court affirmed an order of the Second Circuit, 437 F.2d 957, affirming 426 F.2d 32, that a new trial was required due to errors in the jury charge delivered by the District Court. Plaintiff's action is based in part upon the matters charged and determined in this proceeding.

X.

Fraudulent Concealment

79. Plaintiff had no knowledge of the violation alleged herein or of the facts which might have led to the discovery of the violation, until after the institution of the litigation referred to in paragraphs 77 and 78. Plaintiff could not have discovered the said antitrust violation at an earlier date by the exercise of due diligence, inasmuch as said antitrust violation had been fraudulently concealed from its inception by the defendants by various means and methods used to avoid the detection thereof. Said fraudulent concealment consisted in part of the following acts: misrepresenting material facts and withholding pertinent information from the Patent Office; tightly controlling the dissemination of documents containing relevant data and subsequently destroying these documents.

80. During the pendency of the litigation referred to in paragraphs 77 and 78 and the fraudulent concealment referred to in paragraph 79, the statute of limitations appli-

cable to the instant action (Clayton Act, Section 4B, 15 U.S.C. § 15b) has been and continues to be suspended as provided by statute and otherwise. (Clayton Act, Section 5(b), 15 U.S.C. § 16(b).)

XI.

Injury to Plaintiff

81. During the period of the defendants' violations of the Sherman Act, plaintiff and other members of the classes represented by plaintiff purchased broad spectrum antibiotics and BSA products from the defendants and others. By reason of said violations, plaintiff and other members of the classes represented by plaintiff have been denied the benefits of unrestricted competition, and have paid more for broad spectrum antibiotics and BSA products than they would have paid had defendants' violations not existed. As a result, plaintiff and other members of the class it represents have been inured and damaged in their business or property by defendant in an amount which presently is undetermined.

PRAYER

Wherefore, plaintiff prays that:

(1) this court adjudge and decree that the defendants, and each of them, have combined and conspired to restrain and to monopolize interstate and foreign trade and commerce in the manufacture, distribution and sale of broad spectrum antibiotics and BSA products, and have monopolized and attempted to monopolize such trade and commerce, as hereinbefore alleged, in violation of Sections 1 and 2 of the Sherman Act;

(2) judgment entered in favor of plaintiff and the classes represented by plaintiff against the defendants, jointly and severally, for the injury and damage caused by defendants in an amount three-fold the actual damages sustained with interest thereon;

(3) this court allow, and defendants be required to pay, jointly and severally, the full costs of this suit, including as part thereof a reasonable fee for the services of plaintiff's atorneys; and

(4) plaintiff be granted such other, further, and different relief as the nature of the case may require and as may seem just and appropriate to this Court.

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IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MINNESOTA

4-71 Civ. 435 D. of Minnesota
and the following action:

(Dist. of Columbia Civil Action No. 650-72)

In Re Coordinated Pretrial Proceedings
in Antibiotics Antitrust Action

THE REPUBLIC OF THE PHILIPPINES BY AND THROUGH
THE CENTRAL BANK OF THE PHILIPPINES,

Plaintiff,

v.

PFIZER, INC.; AMERICAN CYANAMID COMPANY; BRISTOL-MYERS COMPANY; SQUIBB, INC.; E. R. SQUIBB AND SONS, INC.; OLIN CORP.; and THE UPJOHN COMPANY,

Defendants.

Further Amendment to Complaint

The amended complaint of the Republic of the Philippines, dated December 14, 1973, is further amended by the addition of subparagraphs 51-A and 51-B, as follows:

51-A. Pfizer, in addition to acting in concert with other defendants as alleged above, unilaterally has acted to mislead or defraud the U.S. Patent Office, and has utilized its

patent position, to secure for itself and to attempt to secure for itself, a monopoly in broad spectrum antibiotics, and particularly tetracycline, in the United States and abroad; further, Pfizer, in reliance on said patent position, has engaged in acts in restraint of domestic and foreign trade and commerce in order to obtain and exploit this monopoly, and attempted monopoly, of the broad spectrum antibiotic and tetracycline market.

51-B. Cyanamid, in addition to acting in concert with other defendants as alleged above, unilaterally has acted to mislead or defraud the U. S. Patent Office, and has utilized its patent position, to secure for itself, and to attempt to secure for itself, a monopoly in broad spectrum antibiotics, and particularly chlortetracycline, in the United States and abroad; further, Cyanamid, in reliance on said patent position, has engaged in acts in restraint of domestic and foreign trade and commerce in order to obtain and exploit this monopoly, and attempted monopoly, of the broad spectrum antibiotic and chlortetracycline market.

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January 8, 1974

[certificate of service omitted]

Defendants' Request for Certification, June 25, 1974.

IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

4-71 Civ. 435

In Re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions

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4-71 Civ. 402

THE REPUBLIC OF VIETNAM,

Plaintiff,

v.

PFIZER INC., AMERICAN CYANAMID COMPANY, BRISTOL-MYERS COMPANY, SQUIBB INC., E. R. SQUIBB & SONS, INC., OLIN CORPORATION and THE UPJOHN COMPANY,

Defendants.

4-74 Civ. 65

THE IMPERIAL GOVERNMENT OF IRAN,

Plaintiff,

v.

PFIZER INC., ET AL.,

Defendants.

4-72 Civ. 312

THE REPUBLIC OF THE PHILIPPINES BY AND THROUGH THE CENTRAL BANK OF THE PHILIPPINES,

Plaintiff,

v.

PFIZER INC., ET AL.,

Defendants.

Defendants' Request for Certification, June 25, 1974.

Request for Certification

Defendants hereby request this Court to certify, pursuant to 28 U.S.C. § 1292(b), its Miscellaneous Order 74-31, dated January 16, 1974, and its Miscellaneous Order No. *74-37*, dated June 17, 1974.*

In order to accomplish the certification for interlocutory appeal, it is first requested that this Court amend its Miscellaneous Order 74-31, dated January 16, 1974, entered in 4-72 Civ. 312 (the *Republic of the Philippines* action) to include the following language:

> "The Court is of the opinion that this order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."**

The addition of this language is requested in order to satisfy the requirements of 28 U.S.C. § 1292(b).

It is also requested that this Court amend its Miscellaneous Order No. *74-37*, dated June 17, 1974, entered in 4-71 Civ. 402 and 4-74 Civ. 65 (the actions of the *Republic*

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* This Court has not entered an order on the "Person" question in the *Vietnam* action, but it has stated that its holding in the *Kuwait* action (69 Civ. 4091, S.D.N.Y.) also applies to the *Vietnam* case. No order has been entered upon this question in the *Iran* action. In both of those cases defendants have asserted by way of affirmative defenses that the governments bringing those suits are not "persons" authorized to do so under § 4 of the Clayton Act. Accordingly, the Court may wish to enter orders in the *Vietnam* and *Iran* actions in accordance with its previous rulings on the "Person" issue and then certify those orders under 28 U.S.C. § 1292(b) also.

** Rule 5(a) of the Federal Rules of Appellate Procedure provides, *inter alia:* "An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 days after entry of the order as amended."

of Vietnam and the *Imperial Government of Iran*) to include the same necessary language previously quoted regarding the existence of a controlling question of law and the utility of an immediate appeal.

There can be no doubt that the immediate appeal of these orders may materially advance the ultimate termination of these cases: A decision in favor of defendants on the question of whether foreign sovereigns are "persons" within the meaning of § 4 of the Clayton Act would result in a dismissal of these cases. A decision in favor of defendants on the ability of foreign sovereigns to sue on behalf of their subjects would greatly simplify the trial of these cases in that the claims of these government plaintiffs would then be limited to their own purchases.

Nor does there seem to be room for argument over the proposition that the orders in question involve "controlling question[s] of law as to which there is substantial ground for a difference of opinion. . . ."

The Court has previously certified its holding that a foreign government is a "person" within the meaning of the antitrust laws in its Miscellaneous Order 71-13 in the *Kuwait* case, entered May 24, 1971. In that case, defendants' petition for permission to appeal was granted by the Second Circuit, but before the matter could be heard Kuwait dismissed its action. Moreover, the Republic of the Philippines has previously stated that it does not object to the Court's certification of the "person" as an important and controlling question of law appropriate for interlocutory appeal (Memorandum in Support of Motion to Bring Plaintiff's Action Within the Purview of Miscellaneous Order 71-13, or Bring Certain Defenses on for Prompt Hearing, or to Strike Certain Affirmative Defenses, dated June 19, 1972).

As to the issue whether the Governments of Iran and Vietnam may sue to recover treble damages claimed to have been suffered by their "citizens," as well as for the governments' own purchases, this Court has recognized that its Order would confer upon foreign governments a representative status in the litigation which our laws clearly deny to the Governments of the United States and the several states. The justification for such a startling result is apparently found by this Court in the fact that "the relationship between a foreign government and *its* citizens is not restricted by the Constitution of the United States."

It is respectively submitted that the statement of the proposition is sufficient to demonstrate that it is clearly one "as to which there is substantial ground for difference of opinion . . ." which should be resolved now while it is still possible to avoid what may otherwise later prove to

have been unnecessary and substantial expenditures of time and money by the parties and by the Court.

Dated: June 25, 1974
New York, New York

Respectfully submitted,

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Complaint of the Government of India, October 11, 1974.

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MINNESOTA

No. Civ. 4-74-496

JURY TRIAL DEMANDED

In Re Coordinated Identical Proceedings in Antibiotic Antitrust Actions

THE GOVERNMENT OF INDIA,
Plaintiff,

v.

PFIZER, INC., AMERICAN CYANAMID COMPANY, BRISTOL-MYERS COMPANY, OLIN CORPORATION, THE UPJOHN COMPANY, SQUIBB, INC., and E. R. SQUIBB AND SONS, INC.,
Defendants.

Complaint

Plaintiff, the Government of India, appearing herein by its attorneys, brings this Complaint against Pfizer, Inc., American Cyanamid Company, Bristol-Myers Company, Olin Corporation, The Upjohn Company, Squibb, Inc., and E. R. Squibb and Sons, Inc.

I

JURISDICTION AND VENUE

1. The jurisdiction of this Court to hear this Complaint is based upon the original jurisdiction of the Court to hear "any civil action or proceeding arising under any Act of

Congress regulating commerce against restraint and monopolies," and, as hereinafter set forth, this controversy involves Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), Act of July 2, 1890, Ch. 647, §§ 1 and 2, 26 Stat. 209, as amended; Sections 1, 4, 5, 7, 12 and 16 of the Clayton Act (15 U.S.C. §§ 12, 15, 16, 18, 22 and 26), Act of October 15, 1914, Ch. 323, §§ 1, 4, 5, 12 and 16, 38 Stat. 730, 731, 736 and 737, as amended; and rules and laws against fraud and deceit. Plaintiff sues for treble damages plus costs of suit and reasonable attorney's fees.

2. Each Defendant maintains an office, transacts business, is found, or has an agent within this district.

II

Plaintiff

3. Plaintiff, The Government of India (hereinafter GOI), is a sovereign foreign state with whom the United States of America maintains diplomatic relations.

4. Plaintiff, and Plaintiff's departments, agencies, commissions, institutions, instrumentalities and subdivisions, has purchased, directly and indirectly, substantial amounts of broad spectrum antibiotics and broad spectrum antibiotic products during the period in suit in transactions arising out of the foreign and/or interstate commerce of the United States of America.

III

Capacities in Which Plaintiff Sues

5. Plaintiff, on its own behalf and on behalf of its departments, agencies, commissions, institutions, instrumentalities and subdivisions, maintains this action as a direct and indirect purchaser of broad spectrum antibiotics and broad spectrum antibiotic products (hereinafter BSA and BSAP).

6. Plaintiff maintains this action as the representative of a class consisting of political subdivisions in India which purchased BSA and BSAP.

7. Plaintiff maintains this action as the representative of a class consisting of individual purchasers and consumers in India who purchased and consumed BSA and BSAP.

8. Plaintiff maintains this action as the representative of a class consisting of hospitals and clinics in India which purchased BSA and BSAP.

9. Plaintiff maintains this action as the representative of a class consisting of retailers and wholesalers in India who purchased BSA and BSAP.

10. Plaintiff maintains this action, in a *parens patriae* and proprietary capacity, for damages to its proprietary, commercial and business interests, including loss of foreign exchange, arising from purchases of BSA and BSAP.

11. Plaintiff maintains this action, in a *parens patriae* capacity, for direct out-of-pocket damages suffered by political subdivisions, individuals, hospitals, clinics, retailers, wholesalers and importers in India who purchased BSA and BSAP.

12. Plaintiff maintains this action, in a capacity as official representative of citizens, businesses, institutions and organizations in India, for direct out-of-pocket

damages suffered by such citizens, businesses, institutions and organizations due to purchases of BSA and BSAP.

13. Each of the above-mentioned classes is so numerous that joinder of all members is impracticable. There are questions of law and fact common to each class. The claims of the GOI, as the representative of each class, are typical of the claims of each class. And the GOI will fairly and adequately represent each class.

14. This action will be dispositive of the interests of the members of the above-mentioned classes.

15. The questions of law and fact common to the members of each class predominate over questions involving only individual members, and a class action is superior to other available methods for the fair and efficient resolution of the controversy.

IV

Defendants

16. Defendant Pfizer, Inc. (hereinafter Pfizer) is a corporation organized and existing under the laws of the State of Delaware with principal offices located in New York, New York. Pfizer is the successor to and was formerly known as and transacted business under the name of Chas. Pfizer & Co., Inc. Pfizer is and was engaged in the manufacture, sale, and distribution of various drug products, including BSA and BSAP, which business is conducted in the United States and throughout the world, including India. In its international manufacturing and sales activities, Pfizer sometimes operates and conducts business

through wholly or substantially owned foreign or domestic subsidiaries.

17. Defendant American Cyanamid Company (hereinafter Cyanamid) is a corporation organized and existing under the laws of the State of Maine with principal offices located in New York, New York. Cyanamid is and was engaged in the manufacture, sale and distribution of various drug products, including BSA and BSAP, which business is conducted in the United States and throughout the world, including India. In its international manufacturing and sales activities, Cyanamid sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

18. Defendant Bristol-Myers is a corporation organized and existing under the laws of the State of Delaware whose principal offices are located in New York, New York. The activities of Bristol-Myers in the pharmaceutical field are carried on by Bristol Laboratories Division. Prior to December 1959, the business and assets of the Bristol Laboratories Division were operated as a wholly owned subsidiary of Bristol-Myers Company. Defendant Bristol-Myers Company and Bristol Laboratories, Inc., are hereinafter severally and jointly referred to as "Bristol" unless otherwise indicated. Bristol is and was engaged in the manufacture, sale and distribution of various drug products including BSA and BSAP, which business is conducted in the United States and throughout the world, including India. In its international manufacturing and sales activities, Bristol sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

19. Defendant Upjohn Company (hereinafter Upjohn) is a corporation organized and existing under the laws of the State of Michigan with principal offices located in Kalamazoo, Michigan. Upjohn was and is engaged in the manufacture, sale and distribution of various drug products, including BSA and BSAP, which business is conducted in the United States and throughout the world, including India. In its international manufacturing and sales activities, Upjohn sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

20. Olin Corporation is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal offices located in New York, New York. Olin is the successor to and formerly was known as and transacted business under the name Olin Mathieson Chemical Corporation. Until approximately January 1968, Olin was engaged in the manufacture, sale and distribution of various drug products, including BSA, which business was conducted in the United States and throughout the world, including India. In its international manufacturing and sales activities, Olin sometimes operated and conducted business through wholly or substantially owned foreign or domestic subsidiaries.

21. Squibb, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal offices and place of business located at 460 Park Avenue, New York, New York.

22. E. R. Squibb & Sons, Inc. (sometimes hereinafter referred to as Squibb) is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located in New York, New York. E. R. Squibb & Sons, Inc., is a wholly owned subsidiary of Squibb, Inc., and is engaged in the manufacture, sale and distribution of various drug products including BSA and BSAP, in the United States and throughout the world, including India. Prior to approximately January 1, 1966, the business and assets of E. R. Squibb & Sons, Inc., were operated as the Squibb Division of the defendant Olin. Effective January 1, 1966, Olin transferred all assets and liabilities relating to its pharmaceutcial operations to E. R. Squibb, Inc., a wholly owned subsidiary. In September 1967, Olin and Beech-Nut Life Savers, Inc. (Beech-Nut) agreed upon a merger of E. R. Squibb & Sons, Inc., and Beech-Nut. In anticipation of the merger, Olin transferred all the capital stock of its subsidiary E. R. Squibb & Sons, Inc., in exchange for all of the stock of Squibb, Inc., a corporation newly organized for purposes of effectuating the merger. Immediately prior to the merger, Olin distributed its entire interest in Squibb, Inc., to Olin's stockholders on a pro rata basis. On January 15, 1968, Beech-Nut was merged into Squibb Enterprises, Inc., a wholly owned subsidiary of Squibb, Inc., and the stockholders of Beech-Nut received shares of Squibb, Inc., in exchange for their stock. The name of Squibb, Inc., was changed to Squibb Beech-Nut, Inc., which on April 30, 1971, changed its name to Squibb, Inc. Squibb, Inc. operates through four major subsidiaries: E. R. Squibb & Sons, Inc.; Beech-Nut, Inc.; Dobbs House, Inc.; and Lanvin-Charles of the Ritz, Inc. As a result of these transactions, the assets formerly held by E. R. Squibb & Sons, Inc., the Olin subsidiary, are now held by the defendant E. R. Squibb & Sons, Inc., which

is a newly organized, wholly owned subsidiary of Squibb, Inc. In its international manufacturing and sales activities, Squibb sometimes operates and conducts business through wholly or substantially owned foreign or domestic subsidiaries.

V

DEFINITIONS

23. As used herein:

a. The term "antibiotics" means chemical substances produced by a microorganism, or by chemical synthesis, which have the capacity to inhibit the growth of other harmful microorganisms or to destroy them.

b. The term "broad spectrum antibiotics" (sometimes herein referred to as BSA) means antibiotics which are effective against a wide range of harmful microorganisms, including gram positive and gram negative pathogenic microorganisms, rickettsiae, viruses, spirochetes and protozoa. BSA includes tetracycline, chlortetracycline, oxytetracycline, doxycycline, minocycline, demeclocycline and methacycline.

c. The term "Tetracycline" means the generic name of the broad spectrum antibiotic whose chemical name and structures are 4-dimethylamino—1, 4, 4a, 5, 5a, 6, 11, 12a—octahydro—3, 6, 10, 12, 12a—pentahydroxy—6 methyl—1, 11—dioxo—2 napththa-cene carboxamide and salts, hydrates, esters, complexes and analogs thereof.

d. The term "Aureomycin" means the brand name of the broad spectrum antibiotic manufactured and sold by Cyanamid whose generic name is chlortetracycline, and salts and analogs thereof.

e. The term "Terramycin" means the brand name of the broad spectrum antibiotic manufactured and sold by Pfizer, whose generic name is oxytetracycline, and salts and analogs thereof.

f. The term "Chloromycetin" means the brand name of the broad spectrum antibiotic manufactured and sold by Parke, Davis & Co., whose generic name is chloramphenicol.

g. The term "Products" shall mean any product in the form in which it is sold to retail and wholesale sellers of drugs, hospital, surgical and dental supply houses, doctors, dentists, hospitals, clinics, and government agencies and government institutions, or any one of them. "BSAP" as hereinafter sometimes used shall mean broad spectrum antibiotic products.

h. The term "bulk form" means the chemical form in which a pharmaceutical product is manufactured but which requires packaging in dosage form so as to render it suitable for sale to the drug trade and dispensing to the ultimate consumer.

VI

NATURE OF TRADE AND COMMERCE

24. BSAP are widely used by the medical profession in the treatment of human infectious diseases. They are effective against a wide range of infectious diseases. BSA

are used and sold throughout the world and are regularly shipped within and from the United States in interstate and foreign commerce.

25. During most of the period covered by this Complaint, the BSAP market consisted of (a) Aureomycin, (b) Terramycin, (c) Tetracycline, and (d) Chloromycetin. All four are effective against substantially the same range of pathogenic microrganisms and are substantially interchangeable in medical use. Aureomycin, Terramycin and Chloromycetin have closely similar molecular structures.

26. The first broad spectrum antibiotic sold in the United States was chlorotetracycline. Since December 1948, Cyanamid has marketed this product under the trade name "Aureomycin". On September 14, 1949, Cyanamid, as the assignee of the Duggar application, received U.S. Patent No. 2,482,055 on "Aureomycin and the preparation of same." On September 2, 1952, Cyanamid, as the assignee of the Niedercorn application, received U.S. Patent No. 2,609,329, which was an improvement patent on the process for producing Aureomycin.

27. On October 4, 1949, Parke, Davis & Co. received U.S. Patent No. 2,483,885 on the broad spectrum antibiotic chloramphenicol; and since 1949 it has marketed the product under the trade name Chloromycetin.

28. On July 18, 1950, Pfizer received U.S. Patent No. 2,516,080 on the broad spectrum antibiotic oxytetracycline; and since 1950 it has marketed the product under the trade name of Terramycin.

29. On January 11, 1955, Pfizer, as assignee of the Conover application, received U.S. Patent No. 2,699,054 on the broad spectrum antibiotic Tetracycline.

30. Tetracycline is manufactured by one of two principal methods: (1) a process which subjects chlortetracycline to hydrogenation in the presence of a catalyst which removes the chlorine atom from the molecule, and (2) by a direct fermentation process. At the outset of their manufacture of Tetracycline and for a substantial period of time thereafter, Pfizer and Cyanamid used the hydrogenation process while Bristol used the direct fermentation process.

31. During much of the period covered by this Complaint, Tetracycline was manufactured only by Pfizer, Cyanamid and Bristol. In the United States, Tetracycline was not manufactured by any manufacturer other than Pfizer, Cyanamid and Bristol until late in 1962.

32. Cyanamid has been licensed by Pfizer to manufacture and sell Tetracycline since the issuance of the Conover patent on January 11, 1955. Bristol has been licensed by Pfizer to manufacture and sell Tetracycline since March 28, 1956. Upjohn and Squibb have been licensed to sell some Tetracycline products since March 28, 1956, pursuant to the terms of an agreement between each of them and Pfizer.

33. For a substantial portion of the time covered by this Complaint, Tetracycline products were sold in the U.S. and abroad only by Pfizer, Cyanamid, Bristol, Upjohn and Squibb. Cyanamid commenced selling Tetracycline products in November 1953; Pfizer, in January 1954; Bristol, in April 1954; Squibb in September 1954; and Upjohn in October 1954.

34. For many years commencing in 1954, Upjohn and Squibb purchased all their bulk Tetracycline from Bristol, which, for a substantial period of time covered by this Complaint, was the only seller of bulk Tetracycline.

35. Each of the defendant companies sells Tetracycline products under its own brand or trade name. All use substantially identical dosage forms. The introductory brand names used by Defendants for their Tetracycline products were Cyanamid's "Achromycin"; Pfizer's "Tetracyn"; Bristol's "Polycycline"; Squibb's "Steclin"; and Upjohn's "Panmycin".

36. Cyanamid did not license anyone to manufacture and sell Chlortetracycline in the U.S., and for many years it limited its licenses abroad to its subsidiary companies.

37. Pfizer did not license anyone to manufacture and sell oxytetracycline in the U.S. and limited its licenses abroad to its subsidiary companies.

38. Parke, Davis & Co. did not license anyone to manufacture and sell chloramphenicol in the U.S. and limited its licenses abroad to its subsidiary companies.

39. As a result, Cyanamid, Pfizer and Parke, Davis enjoyed a monopoly on the production and sale of their respective BSA in the United States.

40. Cyanamid and Pfizer each applied for and obtained foreign counterpart patents for chlortetracycline and oxytetracycline respectively and Pfizer for tetracycline and each company sought and received many foreign counterpart patents for improvements and process patents for the manufacture of these drugs and other subsequently developed BSA.

41. Bristol applied for and received foreign counterpart patents for the production or process or manufacture of certain BSA or BSAP; and in certain foreign countries

Bristol obtained a product patent on Tetracycline, notwithstanding its failure to obtain such a patent in the United States.

42. As a result of obtaining the aforesaid U.S. and foreign counterpart patents and their policy not to license others to manufacture or sell these BSA, Pfizer, Cyanamid, Bristol, and Parke, Davis enjoyed a monopoly on the production and sale of these antibiotics throughout much of the world.

43. Tetracycline is the most widely used broad spectrum antibiotic. In the United States sales of Tetracycline products in 1954 amounted to about $39,500,000. In 1957 these sales totaled approximately $114,000,000 and in 1959 the amount sold was $95,000,000.

44. BSAP are sold by Defendants to customers who are classified in the U.S. market as either retail druggists, wholesalers, private hospitals, tax-supported hospitals, or federal government agencies. All Defendants sell directly to these classifications except that Upjohn has not always sold directly to wholesalers.

45. Within the United States, prices of all BSAP remained substantially unchanged from October 1951 to at least July 1960 to the retailer, wholesaler and hospital classifications.

46. International pricing and sales policies for BSA and BSAP are coordinated and controlled by each Defendant's respective management within the United States. Sales and price policies of Defendant's overseas subsidiaries engaged in the manufacture or sale of BSA or BSAP are reviewed by each Defendant's respective management with-

in the United States and are subject to the control of management within the United States.

47. Patent licensing agreements and bulk sales agreements between Defendants and manufacturers or sellers of BSA and BSAP outside of the United States are reviewed and approved by each Defendant's respective management within the United States. Such agreements relating to BSA and BSAP are frequently negotiated within the United States.

48. Substantial quantities of BSA and BSAP manufactured by Defendants in the United States have been sold and shipped to customers outside of the United States, including customers in India.

49. Some BSA and BSAP purchased from the Defendants by customers in India may have been manufactured outside of the United States by Defendants' wholly or partially owned subsidiaries.

50. Some BSA and BSAP purchased by customers in India may have been manufactured outside of the United States by licensees of Defendants. Such licensees pay or paid royalties to Defendants based upon the use of Defendants' U.S. BSA patents and their foreign counterparts. These patents include but are not limited to the foreign counterpart patents of U.S. Patent No. 2,600,054 (Conover); U.S. Patent No. 2,482,055 (Duggar); U.S. Patent No. 2,609,329 (Niedercorn); U.S. Patent No. 2,734,018 (Minieri); U.S. Patent No. 3,092,556; Reissue RE 25,840 (Growich).

VII

Background of the Conspiracy

51. In 1952 Pfizer's Terramycin product sales in the United States totaled over $39,000,000. Cyanamid's Aureomycin product sales in the United States totaled over $38,000,000. These sales amounted to approximately 78 percent of the broad spectrum product market in 1952.

52. In 1953 Pfizer's Terramycin product sales in the United States totaled over $36,500,000. Cyanamid's Aureomycin product sales in the United States were about $32,000,000. These sales amounted to approximately 92 percent of the broad spectrum product market in 1953.

53. As of November 1953, prices of the narrow spectrum antibiotics such as penicillin and streptomycin, which were not patented and were sold by numerous companies, were severely depressed. Each of the defendant companies engaged or had been engaged in the manufacture or sale of such narrow spectrum antibiotics.

54. As of November 1953, Bristol Laboratories, Inc., a then wholly owned subsidiary of Bristol (and presently an operating division thereof) was operating at a loss by reason of the continued decline in the sales price of penicillin which then constituted the major part of the total business of Bristol Laboratories, Inc.

55. As of November 1953, prices of the BSAP then on the market, all patented, were all substantially identical and non-competitive, and had all been maintained at the price level in effect on October 1, 1951.

56. As of November 1953, patent applications on Tetracycline, filed in 1953 by Pfizer, Cyanamid and Bristol severally, were pending in the Patent Office. Pfizer's pending application was a continuation of a previous application rejected by the Patent Office.

57. On September 23, 1953, Heyden Chemical Company filed an application for a patent on Tetracycline. This application was acquired by Cyanamid in December 1953 after arrangements for its acquisition had been completed in November 1953.

58. On or about October 29, 1953, Pfizer and Cyanamid were informed by the Patent Office that an interference would probably be declared on their respective Tetracycline patent applications.

59. By October 1953, Pfizer knew that Cyanamid was interested in Tetracycline and was testing it clinically. Cyanamid also knew that Pfizer was interested in Tetracycline.

60. As of November 1953, Pfizer and Cyanamid knew that Tetracycline was directly competitive with Terramycin and Aureomycin respectively, and that Tetracycline represented a threat to the continuation of their dominant positions and high profits in the then existing BSAP market. Pfizer and Cyanamid also knew that unless one of them could obtain a product patent on Tetracycline, prices of the BSAP could become competitive.

61. In 1954, Bristol had a very small sales force selling pharmaceuticals directly to the drug trade. Upjohn and Squibb, at such time, each had a very large sales force

engaged in the direct sale of pharmaceuticals to the drug trade.

62. Prior to the introduction of Tetracycline products, Cyanamid was manufacturing and selling Aureomycin, ostensibly pursuant to coverage under the Duggar and Niedercorn patents and Cyanamid purportedly had the ability to exclude other companies from the Aureomycin market through the assertion of these patents. In applying for these patents and during the processing of these patent applications, Cyanamid did not disclose the best known mode and manner of its invention and thereby obtained these patents by knowing and willful non-compliance with Patent Office requirements. Accordingly, there is substantial reason to believe that these patents are invalid and unenforceable.

63. Cyanamid's Growich and Minieri patent applications did not conform with Patent Office rules and standards which may render these patents invalid and unenforceable.

VIII

Violations of Law

64. Beginning in or about November 1953, the exact date being unknown to Plaintiff, the Defendants have engaged in an unlawful combination and conspiracy to restrain interstate and foreign trade and commerce in the manufacture, sale and distribution of BSA and BSAP, have combined and conspired to monopolize such interstate and foreign trade and commerce and have attempted to monopolize and monopolized such trade and commerce in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and

2), and Section 7 of the Clayton Act (15 U.S.C. § 18); and have violated rules and laws against fraud and deceit.

The substantial terms of the aforesaid violations have been and are that:

a. The manufacture of Tetracycline be confined to Pfizer, Cyanamid and Bristol in the United States and to a limited number of licensees abroad.

b. The sale of Tetracycline products be confined to Pfizer, Cyanamid, Bristol, Upjohn and Squibb in the United States and to a limited number of licensees abroad.

c. The sale of bulk Tetracycline be confined to Bristol and bulk Tetracycline be sold by Bristol only to Upjohn and Squibb in the United States and Defendants' bulk sales abroad would be to a limited and controlled number of customers.

d. The sale of BSAP by the defendant companies, their subsidiaries and their licensees and/or bulk customers in the United States and abroad be at substantially identical and non-competitive prices.

65. Pfizer, in addition to acting in concert with other Defendants as alleged above, unilaterally has acted to mislead or defraud the U.S. Patent Office, and has utilized its patent position, to secure for itself, and to attempt to secure for itself, a monopoly in BSA, and particularly Tetracycline, in the United States and abroad; further, Pfizer, in reliance on said patent position, has engaged in acts in restraint of domestic and foreign trade and commerce in order to obtain and exploit this monopoly, and attempted monopoly, of the broad spectrum antibiotic and Tetracycline market.

66. Cyanamid, in addition to acting in concert with other Defendants as alleged above, unilaterally has acted to mislead or defraud the U.S. Patent Office, and has utilized its patent position, to secure for itself, and to attempt to secure for itself, a monopoly in BSA, and particularly Chlortetracycline, in the United States and abroad; further, Cyanamid, in reliance on said patent position, has engaged in acts in restraint of domestic and foreign trade and commerce in order to obtain and exploit this monopoly, and attempted monopoly, of the broad spectrum antibiotic and Chlortetracycline market.

67. The said violations have been effectuated by various means and methods including, but not limited to, those alleged in paragraphs 68 through 90 of this Complaint.

68. Cyanamid licensed Pfizer and Bristol to use its Aureomycin patent in the manufacture of Tetracycline and refused to license all other domestic and most foreign applicants.

69. Pfizer licensed Cyanamid and Bristol under its Tetracycline patent and refused to license all other domestic and most foreign applicants.

70. Cyanamid assisted and cooperated with Pfizer in obtaining for Pfizer a patent on Tetracycline.

71. Pfizer, Cyanamid and Bristol suppressed litigation involving the validity of Pfizer's Tetracycline patent.

72. Pfizer, Cyanamid and Bristol withheld pertinent and material information from the Patent Office and otherwise misled the Patent Office prior to the issuance of Pfizer's Tetracycline patent.

73. Cyanamid acquired the competing Heyden patent application on Tetracycline and abandoned the product claims therein.

74. Bristol sold bulk Tetracycline only to Upjohn and Squibb. For a substantial period of time covered by this Complaint, each of the defendant companies refused to sell bulk Tetracycline to all others except that Cyanamid sold a large amount of bulk Tetracycline to Pfizer in early 1954 in assisting Pfizer to make a prompt entry into the Tetracycline product market.

75. Bristol entered into agreements with Upjohn and Squibb, respectively, which required Upjohn and Squibb to purchase all their requirements of bulk Tetracycline from Bristol.

76. Pfizer issued licenses to Upjohn and Squibb, respectively, limited, however, at Bristol's request, to the sale of Tetracycline products.

77. Pfizer and Cyanamid have maintained substantially identical, non-competitive prices on Terramycin products and Aureomycin products, respectively.

78. Pfizer, Cyanamid, Bristol, Upjohn and Squibb each introduced its Tetracycline products on the market at prices which were substantially identical with each other and which conformed to the non-competitive prices of Terramycin products and Aureomycin products in effect as of November 1953, and all these companies thereafter maintained such substantially identical, non-competitive prices.

79. Pfizer, Cyanamid, Bristol, Upjohn and Squibb each introduced its Tetracycline products on the market in

dosage forms and customer classifications substantially identical with the Terramycin product and Aureomycin product dosage forms and customer classifications in effect as of November 1953, and have continued to use such substantially identical dosage forms and classifications.

80. Defendants have communicated with one another and advised one another both in the United States and throughout the world with respect to current and future prices of BSAP.

81. Defendants have jointly sought to restrict or inhibit the purchase of BSA and BSAP which were not manufactured by one of the Defendants.

82. Defendants have consulted with respect to action to inhibit or foreclose the purchase of BSA and BSAP in their generic form and have jointly acted to inhibit or foreclose such purchases.

83. Defendants have jointly agreed as to which patents on BSA and BSAP would be maintained on a worldwide (country-by-country) basis.

84. Defendants have advised and consulted with each other with respect to which of them would bring patent infringement actions or threatened such actions and under which patent relating to BSAP such legal action or threat of legal action would be based in order to prevent the sale of BSA or BSAP by companies other than the Defendants or their licensees.

85. Defendants have threatened to bring and have brought legal actions to prevent the sale of BSA or BSAP by persons other than Defendants or their licensees not-

withstanding Defendants' knowledge that patents relied upon in such lawsuits were fraudulently obtained or were being misused.

86. Defendants have entered into understandings, express or implicit, among themselves and their licensees that certain Defendants or certain of their licensees would not compete in some markets or areas of the world.

87. Defendants have established or attempted to establish worldwide or area prices concerning and governing the sale of BSAP.

88. Defendants have knowingly disparaged the quality of competitive products and have sought to convince prospective customers that competitive BSAP were inferior notwithstanding Defendants' knowledge of the falsity of such assertions or statements.

89. Defendants have purchased or attempted to purchase additional fermentation capacity or entered into bulk purchase contracts with other fermenters thus giving them control over competitive fermentation capacity for BSA and BSAP.

90. Defendants have sold BSA and BSAP on the express or implicit understanding that such products would not be re-exported in any form outside of the country in which they were originally sold.

IX

Effects of the Violations

91. The violations hereinbefore alleged have had the following effects on interstate and foreign commerce, among others:

a. The GOI and its political subdivisions, individual consumers, hospitals and clinics, retailers, wholesalers and importers in India, have all been deprived of the benefits of competition and have been compelled to pay high, non-competitive prices for BSA and BSAP.

b. The GOI has been deprived of vital foreign exchange reserves because excessive amounts of foreign exchange have been required not only to pay for BSA and BSAP at the non-competitive prices charged by Defendants or their licensees but also to enable Defendants or their licensees to make remittances from India, in United States dollars or other foreign currencies, of their profits resulting from sales in India of BSA and BSAP at the non-competitive prices charged by them.

c. Pfizer and Cyanamid have been able to maintain unchanged for prolonged periods their substantially identical, non-competitive, high prices of Terramycin products and Aureomycin products without any price competition from Tetracycline products.

d. Pfizer, Cyanamid, Bristol, Upjohn and Squibb have been able to maintain unchanged for prolonged periods substantially identical, non-competitive, high prices of all BSA and BSAP sold by them, and price competition in the sale and distribution of BSA and BSAP has been prevented and suppressed.

e. Pfizer, Cyanamid, Squibb and Upjohn have been able to make non-competitive, high profits from the sale of their BSAP.

f. Bristol has been able to make non-competitive, high profits in the sale of bulk Tetracycline.

g. A judicial determination of the validity of Pfizer's Tetracycline patent has been prevented.

h. Introduction of improved forms and methods of administration of BSA by other companies has been restricted and prevented, and research in this field has been hampered.

i. Pharmaceutical companies other than the defendant companies desiring to engage in the manufacture or sale of BSA or BSAP have been prevented and precluded from doing so.

j. Other producers and sellers of BSA and BSAP have been precluded from effectively competing in India.

X

Judgments in Governmental Proceedings

92. On July 28, 1958, the Federal Trade Commission issued a Complaint against Pfizer, Bristol, Cyanamid, Squibb and Upjohn, charging, *inter alia*, that Pfizer made false, misleading and incorrect statements to, and withheld material information from, the United States Patent Office for the purpose and with the effect of inducing the issuance of a patent on Tetracycline. *In the Matter of American Cyanamid Co., et al.*, F.T.C. Docket No. 7211. The Complaint also alleged that Bristol and Cyanamid withheld from the Patent Office material information in the course of the prosecution of patent applications, as a result of which Pfizer was aided in obtaining its Tetracycline patent.

It was further alleged that Cyanamid, Bristol, Squibb and Upjohn solicited and accepted licenses from Pfizer under the Tetracycline patent, knowing that material information had been withheld from the Patent Office by one or more of the Defendants. The Complaint further alleged that all five Defendants conspired and combined to fix and maintain prices of BSA, including Tetracycline. On September 29, 1967, the Federal Trade Commission found that Pfizer had obtained the Tetracycline patent by material misrepresentation to, and withholding pertinent information from, the Patent Office; that Pfizer had attempted to monopolize Tetracycline; and that Cyanamid had also withheld material information from the Patent Office in connection with the issuance of the Tetracycline patent. The Commission found that Pfizer's conduct violated Section 2 of the Sherman Act and was therefore a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The Commission further found that Cyanamid's conduct also violated Section 5 of the Federal Trade Commission Act. The Commission issued a final order directing Pfizer and Cyanamid to make licenses under their patents on Tetracycline and Aureomycin available to all other domestic companies on a specified royalty basis. On September 30, 1968, the United States Court of Appeals for the Sixth Circuit affirmed the decision and order of the Federal Trade Commission. *Charles Pfizer & Co. v. F.T.C.*, 401 F.2d 574 (6th Cir. 1968). Plaintiff's action is based in part upon the matters complained of and determined in this proceeding.

93. On August 17, 1961, the United States of America instituted a criminal prosecution, 61 Cr. 772, in the United States District Court for the Southern District of New York, naming Pfizer, Cyanamid and Bristol as defendants,

and Squibb and Upjohn as co-conspirators. The three-count indictment alleged the same combination and conspiracy to restrain trade and to monopolize and monopolization which are the subject matter of the present action. On December 29, 1967, after a jury trial, defendants Pfizer, Cyanamid and Bristol were each found guilty of each of the violations charged. Judgments of conviction were entered and maximum fines imposed on February 28, 1968. On January 28, 1972, an equally divided Supreme Court affirmed an order of the Second Circuit, 437 F.2d 957, affirming 426 F.2d 32, that a new trial was required due to errors in the jury charge delivered by the District Court. Plaintiff's action is based in part upon the matters charged in this proceeding.

XI

Fraudulent Concealment

94. Plaintiff had no knowlede of the violations alleged herein or of the facts which might have led to the discovery of the violations, until after the institution of the litigation referred to in paragraphs 92 and 93. Plaintiff could not have discovered the said antitrust violations at an earlier date by the exercise of due diligence, inasmuch as said antitrust violations had been fraudulently concealed from their inception by the Defendants by various means and methods used to avoid the detection thereof. Said fraudulent concealment consists in part of the following acts: misrepresenting material facts and withholding pertinent information from the Patent Office; tightly controlling the dissemination of documents containing relevant data and subsequently destroying these documents.

95. During the pendency of the litigation referred to in paragraphs 92 and 93 and the fraudulent concealment referred to in paragraph 94, the statute of limitations applicable to the instant action (Clayton Act, Section 4(b), 15 U.S.C. § 15(b)) has been and continues to be suspended as provided by statute and otherwise. Clayton Act, Section 5(b), 15 U.S.C. § 16(b).

XII

Injury to Plaintiff

96. During the period of the Defendants' violations of the Sherman Act, Plaintiff and other members of the classes represented by Plaintiff purchased BSA and BSAP from the Defendants and others. By reason of said violations, Plaintiff and other members of the classes represented by Plaintiff have been denied the benefits of unrestricted competition, and have paid more for BSA and BSAP than they would have paid had Defendant's violations not existed. As a result, Plaintiff and other members of the classes it represents have been injured and damaged in their business or property by Defendants in an amount which presently is undetermined.

PRAYER

Wherefore, Plaintiff prays that:

(1) this Court adjudge and decree that the Defendants, and each of them, have combined and conspired to restrain and monopolize interstate and foreign trade and commerce in the manufacture, distribution and sale of BSA and BSAP; have each of them restrained such trade and commerce; and have monopolized and attempted to monopolize

Complaint of the Government of India, October 11, 1974.

such trade and commerce, as hereinbefore alleged, in violation of Sections 1 and 2 of the Sherman Act; have violated Section 7 of the Clayton Act; and have violated rules and laws against fraud and deceit;

(2) judgment be entered in favor of Plaintiff and the classes represented by Plaintiff against the Defendants, jointly and severally, for the injury and damage caused by Defendants in an amount threefold the actual damages sustained with interest thereon;

(3) this Court allow and Defendants be required to pay, jointly and severally, the full costs of this suit, including as part thereof a reasonable fee for the services of Plaintiff's attorneys; and

(4) Plaintiff be granted such other, further, and different relief as the nature of the case may require and as may seem just and appropriate to this Court.

KIRKWOOD, KAPLAN, RUSSIN & VECCHI
Counsel for Plaintiff
1218 Sixteenth Street, N.W.
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By /s/ LAWRENCE R. VELVEL
Lawrence R. Velvel

JURY DEMAND

Please take notice that Plaintiff demands a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable of right by a jury.

Dated October 11, 1974

Defendants' Notice of Motion to Dismiss the Complaint of the Government of India, October 17, 1974.

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

Civ. 4-74-496

THE GOVERNMENT OF INDIA,

Plaintiffs,

—against—

PFIZER INC., AMERICAN CYANAMID COMPANY, BRISTOL-MYERS COMPANY, OLIN CORPORATION, THE UPJOHN COMPANY, SQUIBB, INC., and E. R. SQUIBB & SONS, INC.,

Defendants.

Notice of Motion

SIRS:

PLEASE TAKE NOTICE that, upon the annexed affidavit of Peter Dorsey, Esq. and the complaint herein, defendants will move before the Honorable Miles W. Lord, United States District Judge, at 10:00 A.M., or as soon thereafter as counsel may be heard, on October 22, 1974, in Courtroom 1, United States Court House, Minneapolis, Minnesota, for an order, pursuant to Rule 12(b) (6), F.R. Civ. P., dismissing the above-captioned action for failure to state a claim upon which relief can be granted, on the ground that the complaint fails to state a claim under Section 4 of the Clayton Act (15 U.S.C. § 15) because plaintiff, a foreign government, is not a "person" entitled to sue

under that statute. If the Court should deny this motion, defendant will request that it promptly certify its decision for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).

Dated: October 17, 1974

Yours, etc.

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Affidavit of Peter Dorsey

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA
FOURTH DIVISION

Civ. 4-74-496

THE GOVERNMENT OF INDIA,

Plaintiff,

—against—

PFIZER INC., AMERICAN CYANAMID COMPANY, BRISTOL-MYERS COMPANY, OLIN CORPORATION, THE UPJOHN COMPANY, SQUIBB, INC., and E. R. SQUIBB & SONS, INC.,

Defendants.

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } ss.

PETER DORSEY, being duly sworn, deposes and says:

1. I am a member of the firm of Dorsey, Marquart, Windhorst, West & Halladay, counsel for defendant American Cyanamid Company. I am familiar with the proceedings in *In Re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions* (4-71 Civ. 435) and with the complaint in the above-captioned action by the Government of India ("India"). A copy of India's complaint, which was delivered to me by a United States Marshall on October 15, 1974, is annexed as Exhibit A to this affidavit.

2. On information and belief, the plaintiff Government of India is a sovereign foreign state, which in terms of population and geographic area is one of the largest in the world. In its complaint (¶ 3), plaintiff alleges that it is "a sovereign foreign state."

3. India's complaint is substantially identical with those filed in actions brought by the Republic of Vietnam ("Vietnam") (4-71 Civ. 402) and by the Imperial Government of Iran ("Iran") (4-74 Civ. 65), and is closely similar to that filed in the action brought by the Republic of the Philippines by and through the Central Bank of the Philippines ("the Philippines") (4-72 Civ. 312). India, like Vietnam and Iran, alleges itself to be suing for itself and in a "*parens patriae*" capacity upon the individual claims of its nationals. Furthermore, like Vietnam, India alleges itself to be the "official representative" of its citizens' individual claims. (Complaint, ¶¶ 5, 10, 11, 12). India, like the other three foreign governments, also asserts various internal classes pursuant to Rule 23, F.R. Civ. P. (Complaint, ¶¶ 5, 6, 7, 8, 9, 13, 14, 15).

4. Counsel for India, the law firm of Kirkwood, Kaplan, Russin & Vecchi, as represented by Mr. Lawrence Velvel, is also counsel for Vietnam. Mr. Velvel's partner, Mr. Julius Kaplan, was signatory to the original Vietnam complaint and has participated in the *Vietnam* action ever since its inception.

5. By its Miscellaneous Orders 71-13 and 74-31, this Court has already ruled in other foreign government cases that a foreign government, such as India, is a "person" within the meaning of Section 4 of the Clayton Act (15 U.S.C. § 15) and therefore may maintain a suit for treble damages under that Act. By its Miscellaneous Order 74-39, this Court denied a request by defendants in other foreign government cases to certify its decision on the "person" question for interlocutory appeal pursuant to 28 U.S.C.

§ 1292(b). Counsel for Vietnam and India actively participated in and is fully familiar with written and oral arguments on the "person" question which have been previously presented to this Court.

6. By an order dated October 1, 1974 (in Docket No. 74-1680), the United States Court of Appeals for the Eighth Circuit requested briefing upon the foreign government "person" question and certain other issues raised by a combined petition for an extraordinary writ and for leave for permission to take an interlocutory appeal under 28 U.S.C. § 1292(b) which was filed on September 16, 1974 in the Court of Appeals by the defendants in the other foreign government cases. Counsel for Vietnam (who also represents India) has already submitted a response upon the "person" question to the Court of Appeals and will shortly be required to submit a brief on that question as well.

7. During the August 7, 1974, pretrial conference in *In Re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, this Court said that it would immediately certify the "person" question for interlocutory appeal if another foreign government suit were to be filed:

> "However, I will state that as to any future case filed I will immediately certify that question for appeal. Any future foreign government cases I will immediately certify that question for appeal, just on any preliminary motion that you might bring." (Trans., August 7, 1974 at 37-38).

8. Another foreign government case has now been filed. Since its counsel is already entirely familiar with the merits

Defendants' Notice of Motion to Dismiss the Complaint of the Government of India, October 17, 1974.

of the "person" question, and has previously fully argued the point, it is defendants' position that that issue is ripe for immediate hearing and decision in this case, and (should the decision be contrary to them) for interlocutory appeal under 28 U.S.C. § 1292(b).

/s/ Peter Dorsey
PETER DORSEY

Sworn before me this
17th Day of October, 1974

MARY ANN HINTZ
Notary Public

[Certificate of service omitted in printing.]

"Appendix A" to Brief for Respondent Republic of the Philippines, January 8, 1975, in *Pfizer Inc., et al.* v. *Lord and the Republic of Viet Nam, et al.*, 8th Circuit No. 74-1680, resubmitted to the Court of Appeals herein.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 74-1680

PFIZER, INC., AMERICAN CYANAMID COMPANY, BRISTOL-MYERS COMPANY, SQUIBB CORPORATION, OLIN CORPORATION, and THE UPJOHN COMPANY,

Defendants-Petitioners,

—against—

HONORABLE MILES W. LORD,
United States District Judge,

Respondent,

—and—

THE REPUBLIC OF VIETNAM, THE IMPERIAL GOVERNMENT OF IRAN, and THE REPUBLIC OF THE PHILIPPINES By and Through THE CENTRAL BANK OF THE PHILIPPINES,

Plaintiffs-Respondents.

ON APPEAL FROM, AND PETITION FOR AN EXTRAORDINARY WRIT DIRECTED TO, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

APPENDIX A

PREFACE

Exhibits 1, 9, 10, 15 and 16 of this appendix were obtained from respondent's files. All other exhibits were obtained from or through defendants during the consolidated pre-trial discovery proceedings. Many of the documents received from the defendant-petitioners were nearly illegible at the time of receipt. All exhibits obtained from defendants have been reproduced as received.* In order to assist the Court, we have retyped certain of these exhibits. In a few instances, it has been necessary to leave a blank for a particular word or phrase because we have been unable to determine exactly what was said in the original.

Joseph B. Friedman
James H. Mann
Lucas, Friedman & Mann
1028 Connecticut Ave., NW
Washington, DC 20036

Ephraim Jacobs
Douglas V. Rigler
Foley, Lardner, Hollabaugh & Jacobs
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*[Notice by petitioners re: preparation of this portion of the Appendix—Photocopies of original documents submitted by respondents before the Court of Appeals were in large part illegible and respondents provided typewritten transcriptions. The text reprinted here is that of respondents' typewritten transcriptions. No attempt has been made to reproduce photocopies of the original documents.]

EXHIBIT 1

TEXT OF THE PHILIPPINE CENTRAL BANK ACT

FIRST CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
Third Session

[H. No. 1704.]
(REPUBLIC ACT NO. 265)

AN ACT ESTABLISHING THE CENTRAL BANK OF THE PHILIPPINES, DEFINING ITS POWERS IN THE ADMINISTRATION OF THE MONETARY AND BANKING SYSTEM, AMENDING THE PERTINENT PROVISIONS OF THE ADMINISTRATIVE CODE WITH RESPECT TO THE CURRENCY AND THE BUREAU OF BANKING, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I.—ESTABLISHMENT AND ORGANIZATION OF THE CENTRAL BANK OF THE PHILIPPINES

ARTICLE I.—*Creation, Responsibilities and Corporate Powers of the Central Bank*

SECTION 1. *Creation of the Central Bank.*—There is hereby created a body corporate to be known as the Central Bank of the Philippines, which shall be governed by the provisions of this Act.

The capital of the Central Bank shall be TEN MILLION (₱10,000,000) PESOS, which are hereby appropriated from the assets of the Exchange Standard Fund, as provided in section 134 of this Act.

Exhibit 1

SEC. 2. *Responsibilities and objectives.*—It shall be the responsibility of the Central Bank of the Philippines to administer the monetary and banking system of the Republic.

It shall be the duty of the Central Bank to use the powers granted to it under this Act to achieve the following objectives:

(*a*) To maintain monetary stability in the Philippines;

(*b*) To preserve the international value of the peso and the convertibility of the peso into other freely convertible currencies; and

(*c*) To promote a rising level of production, employment and real income in the Philippines.

SEC. 3. *Place of business.*—The Central Bank shall have its principal place of business in the City of Manila, but may have such branches, agencies and correspondents in other places as are necessary for the proper conduct of its business.

SEC. 4. *Corporate powers.*—The Central Bank is hereby authorized to adopt, alter, and use a corporate seal which shall be judicially noticed; to make contracts; to lease or own real and personal property, and to sell or otherwise dispose of the same; to sue and be sued; and otherwise to do and perform any and all things that may be necessary or proper to carry out the purposes of this Act.

The Central Bank may acquire and hold such assets and incur such liabilities as result directly from operations authorized by the provisions of this Act, or as are essential to the proper conduct of such operations.

Exhibit 1

ARTICLE II.

THE MONETARY BOARD

SEC. 5. *Composition of the Monetary Board.*—The powers and functions of the Central Bank shall be exercised by a Monetary Board, which shall be composed of seven members, as follows:

(*a*) The Secretary of Finance, who shall preside at the meetings of the Monetary Board. Whenever the Secretary of Finance is unable to attend a meeting of the Board, the Undersecretary of Finance shall act as his alternate, but shall not preside.

(*b*) The Governor of the Central Bank, who shall preside at the meetings of the Board in the absence of the Secretary of Finance. The Governor shall be appointed for a term of six years by the President of the Philippines with the consent of the Commission on Appointments. Whenever, the Governor is unable to attend a meeting of the Board, the ranking deputy-governor shall act in his stead.

(*c*) The President of the Philippine National Bank, whose alternate shall be the senior vice-president of said bank.

(*d*) The Chairman of the Board of Governors of the Rehabilitation Finance Corporation, whose alternate shall be the ranking governor of said corporation.

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1. This and succeeding references to the "ranking deputy-governor" are apparent errors, since the law provides for the appointment of only deputy-governor. *See* Sec. 31.

EXHIBIT 2

p. 1

RETYPED FOR LEGIBILITY PURPOSES

February 26, 1954

Tetracycline

FOREIGN PATENT APPLICATIONS

1. In the following "Convention" countries, a Pfizer patent should issue receiving benefit of at least Pfizer parent U.S. case (10/23/52). Cyanamid will also file under their convention date (2/16/53) and claim matter not covered by Pfizer case, provided this will not endanger the Pfizer broad claim.

Austria
Belgium (Pfizer-issued 2/15/54—Patent No. 523, 640) (Cyanamid issued 1/30/54)
Brasil*
Canada (Pfizer patent allowed) (Cyanamid filed—may also issue)
Cuba (Pfizer—restricted to parent case)
Egypt
France
Germany*
Great Britain (Parties cooperate to get broadest valid product claims)
Greece
Japan*
Mexico
Portugal
Spain (Issued 2/11/54)
Switzerland*
Turkey
Union of South Africa

* Cyanamid will file and claim their convention date (3/16/53) for all material not disclosed in Pfizer parent U.S. case, but will hold up prosecution to determine extent of protection received in Pfizer patent.

Exhibit 2

2. Countries in which Pfizer will file applications for confirmation patents based on Spanish patent or convert present applications to confirmation patents. Cyanamid may also file based on its Belgian case if discussions with foreign agents indicate that this has any value.

Argentina*
Belgian Congo (Both Pfizer and Cyanamid to file based on Belgian case)
Bolivia
Chile*
Colombia*
Iran
Iraq
Jamaica
Jordan
Peru*
Venezuela*

* Countries where pending regular Pfizer application is being converted to confirmation patent. We have been informed that this can be done without injury to the patent.

3. Convention countries in which Cyanamid will file and claim their U.S. filing date (3/16/53):

Australia*
Denmark*
Dominican Republic
Finland*
French Morocco
Holland
Indonesia**
Ireland
Israel
Italy*
Yugoslavia
Lebanon
Luxemburg
New Zealand*
Norway*
Philippines*
Sweden
Syria
Tangier
Trinidad
Tunisia

* Countries in which Pfizer applications were filed and will not receive benefit of U.S. patent case date but will be kept on file.

** Provisional filing will be made by Pfizer with attempt to claim U.S. date.

Exhibit 2

4. Following non-convention countries adhering to the Inter-Dominion Convention, Cyanamid will file based on its Canadian application date (9/12/53):

India*
Pakistan*

* (Consider withdrawing Pfizer application to give clearly valid Cyanamid patent).

5. Cyanamid will file in following countries claiming their U.S. application date (3/16/53) under Buenos Aires Convention:

Ecuador	Costa Rica
Haiti	Guatemala
Panama	Honduras
Paraguay	Nicaragua
Uruguay	

6. Pfizer will consider filing for registration patents in the following countries, based on our British patent (when it issues).

Aden	Kenya
Bermuda	Malay States
British Guiana	Nigeria
British Honduras	Nyasaland
Ceylon	Northern Rhodesia
Dominica	Singapore
Gold Coast	Tanganyika
Hong Kong	

Exhibit 2

7. Countries in which both Pfizer and Cyanamid *will* file:

Bahamas	Korea
Barbados	Salvador
Iceland	Southern Rhodesia
Liberia	Southwest Africa

8. Pfizer has filed and Cyanamid will also file:

Formosa (Taiwan)

EXHIBIT 3

CASE NO. 21,058—Continued

data obtained during the clinical trials is expected to be available. Also, it was noted at the Meeting, in view of the existence of a Scherico French patent which contains one broad claim that may be pertinent to this invention, a careful evaluation of this patent should be had prior to selecting countries for a recommendation for foreign filings on this case.

MAINTENANCE SECTION

The following patent cases are those in which the Pharmaceutical Chemicals Patent Committee has expressed no further interest and recommended abandonment of all corresponding patents and/or patent applications abroad. However, all of these patent cases fall within the terms of the licensing agreements with Bristol and/or Pfizer. Because of the Bristol-Pfizer aspects, Management has requested that all patents and/or patent applications concerned be maintained pending anticipated negotiations with Bristol and Pfizer on or after June 1, 1966 with a view towards obtaining Pfizer's and/or Bristol's concurrence in abandoning these items or, alternatively, give Bristol and/or Pfizer the opportunity to request continued maintenance of these patents and patent applications at their expense. These patent cases are as set forth immediately below:

Group "A"—GENERAL

CASE NO. 14,550

Albert Peter Doerschuk
Barbara Ann Bitlar
Milton Andrew Petty
—PRODUCTION OF ANTIBIOTIC II (BROMTETRACYCLINE)

Group "B"—TETRACYCLINE

Exhibit 3

CASE NO. 14,692

Harold Mendelsohn —PRODUCTION OF ANTIBIOTIC

and

CASE NO. 14,984

Albert Peter Doerschuk —FERMENTATION MEDIUM AND PROCESS OF MAKING AND USING SAME

EXHIBIT 4

B — TETRACYCLINE

CASE NO. 14,272

James H. Boothe
John Morton, II
—CHEMOTHERAPEUTIC MATERIALS AND METHODS OF PREPARING SAME

This invention is in use in the United States. It is licensed in a number of countries and also falls within the world-wide agreements with Bristol and Pfizer. The invention covers the catalytic reduction of chlortetracycline to tetracycline. Products produced by the invention are sold as ACHROMYCIN® Tetracycline Capsules. In view of the importance of the invention, it is recommended that all patents and patent applications abroad be maintained by payment of taxes and workings now due. However, this recommendation is made with the proviso that Mr. J. V. McDonald explore with Messrs J. V. Whittenburg and A. S. Phillips the possibility of eliminating from our maintenance program the patents in those countries where Pfizer has priority, and report to the Committee before June 1966, after which time we expect to write to Bristol and Pfizer seeking their concurrence in abandoning certain patent cases. The recommendation is also made with the proviso that any patents-of-addition be carefully noted prior to actually abandoning any patents corresponding to this invention.

Exhibit 4

CASE NO. 14,757

John H. E. J. Martin
Nestor Bohonos
Benjamin H. Duggar
Stanley E. DeVoe
—PRODUCTION OF ANTIBIOTIC (TETRACYCLINE BY FERMENTATION)

This invention is not in use in the United States. It falls within the terms of the Bristol agreements. This case represents a basic invention for producing tetracycline by fermentation whereby the so-called strain selection technique is used. In view of the importance of the invention it is recommended that all patents and patent applications abroad be maintained by payment of taxes and workings now due.

EXHIBIT 5

ONW/CMB

18th June, 1957.

Mr. R. T. Bogan,
Room 225,
U.S. Rubber Building,
New York 20, N. Y.

Dear Bob,

I just had Mr. Fenton of Pfizers on the phone enquiring concerning our export sales policy for antibiotics in Eastern European countries and China. I told him that we were following the policy of our parent company in that we were not shipping into these areas. Mr. Fenton volunteered the information that this was also his policy at the moment, with the exception that they were actively engaged in making sales to Poland.

Fenton also told me that Leslie Smith of Parke Davis had told him that he makes no bones concerning shipments not only into Eastern Europe but also into China. I thought this information might be of interest to you, if you are not already aware of it, and would be anxious to receive any changes in policy which will enable us to broaden our business in an approved manner.

Yours sincerely,

/s/ Pete

O. N. Williams

EXHIBIT 6

PFIZER

MEMORANDUM

Date: 30th March 1965
To: All Country Managers
From: L. E. Armerding—Nairobi
Subject: Oxytetracycline Infringements

CONFIDENTIAL

I have recently had occasion to correspond with our Legal Department in New York concerning these infringements in Africa.

While it continues to be company policy to defend ourselves wherever possible, we must realise that our patent position on oxytetracycline in Africa is very weak, and therefore there is little that can be done within the continent itself.

Furthermore, the logical place to exert pressure is the country in which the supplier of the original material is located, and it is interesting that these are precisely the countries (with the exception of Italy) where our patent position is most effective.

However, in order to help the Legal Department in New York to help us, the important thing is to determine the sources from which the company operating in your territory receives its material. This determination should be substantiated by conclusive evidence and can then be used

Exhibit 6

by the New York Legal Department to help us defend our patent position.

L. E. Armerding

/pmf

To: Messrs. A. J. Barbosa—Lourenco Marques
N. C. Goutard—Casablanca
T. H. Heinrichs—Accra
C. J. Jones—Ikeja
T. H. Lloyd—Nairobi
M. F. Marques—Luanda
G. E. Norman—Salisbury
R. S. Parott—Johannesburg
B. Vignes—Dakar

c.c. Mr. J. W. Dougherty—New York

EXHIBIT 7

RETYPED FOR LEGIBILITY PURPOSES

EXECUTIVE STAFF MEMORANDUM
BRISTOL-MYERS AND SUBSIDIARY COMPANIES

DATE September 25, 1957
SUBJECT Banyu Tetracycline

W. F. Moos
A. J. Vermeulen

Messrs. B. B. Clyman
D. L. Sanders

CONFIDENTIAL

Today Austin Phillips telephoned to ask whether we had extended Banyu's tetracycline Territory beyond Japan and had inadvertently failed to notify them of such fact. He explained the reason for his inquiry as being a cable from Takeda to the effect that Banyu had listed tetracycline as a product available for export from Japan in an exporter's catalog soon to be published. This is the Catalog of Pharmaceutical, Medical and Dental Supplies of the Exporters Association which is to be published early in 1958. Phillips is concerned because if one Japanese manufacturer is permitted by his licensor to export, pressure from the government on the other Japanese manufacturers to do likewise will be tremendous.

I informed Phillips that we had not extended Banyu's Territory, and I relayed your opinion that Banyu would not deliberately go outside of its Territory and your strong aversion to disrupting our good relationship with Banyu

Exhibit 7

by even querying them in this matter. Phillips found our attitude completely understandable and said that he would endeavor to obtain more definite information and possibly proof of Takeda's belief which he will forward to us as soon as it is received.

I know that there was no change in the written documents, but you will remember considerable discussion about China and that in the proposed amendment prepared to authorize Banyu to sublicense Meiji if that deal went through. Banyu's Territory [has] changed to include China. The proposed amendment was never executed and Banyu's Territory was not changed in writing, but Banyu seems quite satisfied to operate on oral statements, and I am wondering whether that [c]ould possibly be happening here.

WFM: RBB

EXHIBIT 8

MEMORANDUM

BRISTOL LABORATORIES

FROM C. W. Carlson
To File
C.C.

DATE March 2, 1966

SUBJECT Canadian and Philippine Tetracycline Infringement

On March 2, 1966, Mr. Sterns brought to our attention the fact that he had just received from Mr. Enriquez samples of Unitrex capsules, reportedly tetracycline hydrochloride. This product is distributed in the Philippines and by its label indicates that it originates with Lukas Pharmaceuticals of Toronto, Canada.

In view of the patent situation in the Philippines, it would be desirable to try to police this infringement from Canada.

/s/ C. W. C.
C. W. C.

EXHIBIT 9

Deposition of Frank Wilson, Vol. II

[86] Q. Did you ever attend meetings of that organization when it was discussing or concerned with the problem of generic drugs in competition with branded products in various portions, parts of the world?

A. No.

Q. Mr. Wilson, during the time that you had been employed by Pfizer International, can you tell me whether or not you have met with, contracted or discussed with any personnel employed by any of your competitors any matter relating to the business of your company or the competitor's company?

A. Yes.

Q. All right. Would you tell me just generally, sir, the circumstances under which you have had such meetings or contacts with representatives of competitors?

A. In the early days of establishing our International organization we did contact major competitors and asked them specific questions regarding specific actions in specific markets.

Mr. Boyden: Incidentally, when you are using the word "company" in this question, Mr. Greenan, are we going back to Pfizer International? As you stated yesterday, you were using the Pfizer International.

Mr. Greenan: Right. I think, as a matter of fact, this question was specific on Pfizer International as I worded it.

[87] Mr. Boyden: Fine.

Exhibit 9

By Mr. Greenan:

Q. You speak of the early days, sir. During what period of time, to your knowledge, were contacts made of major competitors to ask them specific questions on specific subjects?

A. I would say up through late '59 or early—or in 1960.

Q. Can you tell me, sir, the circumstances surrounding these contacts, that is whether or not these were written or by phone or by direct reading, that sort of thing?

A. Generally by telephone.

Q. When you say that you would contact representatives of your major competitors, sir, I wonder if you could identify for me, to the best of your recollection, the major competitors whom you have contacted as you described?

A. I would say Cyanamid, Squibb. To a lesser extent, Bristol.

Q. And have you ever had any contacts, that you recall, sir, with any representative of the Upjohn Company?

A. I cannot recall any.

Q. Beginning first with the Cyanamid Company, Mr. Wilson, would you give me the names of the individual at that company that you recall having contacted with specific questions on specific subjects?

[88] A. Ralph Roland. Ernie Hesse. A fellow named Bliss, but I can't recall his first name.

Q. Bliss?

A. Bliss. I think it was—

Q. B-l-i-s-s?

A. I think it's—I don't know if it's Ray Bliss or—I have forgotten his first name. That's about all I think. I can't recall any others.

Exhibit 9

Q. Do you recall a gentlemen by the name of Porro?

A. No.

Q. P-o-r-r-o, Juan Porro?

A. No.

Q. Do you recall a gentleman by the name of Bert Tamblin?

A. Yes, Bert Tamblin, that's the name. I am sorry, I forgot that one.

Q. Now could you identify for me, sir, Ralph Roland? That is, to the best of your knowledge, what was his position in the American Cyanamid organization?

A. I really don't know. His was in the International, and I think originally his name was given to me by someone in our own organization. Possibly Preston McGoodwin, who previously worked for Cyanamid.

Q. Under what circumstances, sir, did you contact Mr. Roland?

[89] Mr. Boyden: What do you mean by that Mr. Greenan? Do you mean what did he call him about or contact him about?

Mr. Greenan: Strike the question.

By Mr. Greenan:

Q. Did you contact Mr. Roland, as you have described, sir, to ask him specific questions on specific subjects?

A. Yes.

Q. I wonder if you could explain for me the incidents when that occurred?

A. Whenever we received an inquiry or report from the field which indicated that Cyanamid had been reported to have taken some action which we had no record of information of occurring elsewhere.

Exhibit 9

Q. When you say "taken some action," sir, would that include a change in prices?

A. Possibly.

Q. Would that include things such as the offer of free goods on a government tender?

A. Possibly.

Q. When you had received such an inquiry or report, sir, what would be the purpose for contacting Mr. Roland?

A. Well, our problem was that we didn't have in the early days enough information about the market, and from experience found out that many hospital purchasing agents or municipal buyers deliberately mislead our personnel as to the • • • [102] discuss anything pertaining to the business of Pfizer or its competitor?

A. No.

Q. When did you first begin contacting any representative of the Cyanamid organization on these matters which we have discussed?

A. I honestly can't recall.

Q. Is there any way you are able to tie it down with regard to a particular period of time?

A. I would say it was prior to some time in late '59 or '60.

Q. Prior to late '59 or early '60?

A. Yes.

Q. Do you recall how much prior?

A. It would be measured in years, but I honestly can't say how long.

Q. Do you recall the circumstances under which you first contacted a representative of the Cyanamid organization?

A. I think the question was raised in our organization as to what we could do about information that was being supplied by our field organizations in which we did not have

Exhibit 9

full faith and reliability in. And our legal counsel, Paul McDermott, indicated to us that we could contact competitors if we limited our inquiries to specific markets, products and • • • [106] other individuals within Pfizer International of whom you were aware were having contacts with representatives of competitive organizations, such as those which you have described?

A. Possibly someone under John Smart.

Q. Can you tell me, sir, whom that individual might have been?

A. No, I do not recall the individuals. At one time this was a training spot, and we did have a fair turnover.

Q. Other then someone who reported to Mr. Smart, any other individuals in the Pfizer Organization?

A. Not that I can recall.

Q. Would you tell me, Mr. Wilson, whether or not from time to time representatives of the American Cyanamid Company contacted you with regard to matters pertaining to the business of either American Cyanamid Company or it competitors?

A. They may have, but I think most of that contact would be with John Smart.

Q. Do you recall ever receiving an inquiry from any representative of American Cyanamid Company on any matter pertaining to Pfizer's business?

A. It's possible, but I can't recall.

Q. All right. Do you recall whether or not Mr. Smart ever reported to you that he had received inquiries from representatives of the American Cyanamid Company requesting [107] confirmation or denial of certain matters?

A. I think so.

Exhibit 9

Q. Do you recall whether or not Mr. Smart ever reported to you that he had confirmed or denied an inquiry from a representative of the American Cyanamid Company?

A. I also think so.

Q. All right. Now, Mr. Wilson, with regard to all of these discussions we have had with regard to your contacts with representatives of American Cyanamid Company, would you tell me whether or not these contacts pertain to the broad spectrum antibiotic products?

A. With Cyanamid?

Q. Yes.

A. I would think most of them were broad spectrum. There may have been some on steroids also.

Q. But the majority of them would have been on broad spectrum antibiotic products?

A. Right.

(Discussion off the record.)

By Mr. Greenan:

Q. Mr Wilson, would you tell me whether or not you ever had any written communications with any representative of the American Cyanamid Company on any matter pertaining to the business of Pfizer?

A. I don't think so.

• • •

[120] A. I just wanted to make that clear.

Q. —you had any contacts with any individual—

A. Okay.

Q. —pertaining to business of your companies.

A. The answer to that is no.

Q. Would you tell me, Mr. Wilson, whether or not you were aware that any other individual connected with the

Pfizer Organization contacted personnel at the Squibb Company on matters pertaining to either Pfizer's business or that of its competitors?

A. The pricing department.

Q. When you say "the pricing department," would that be Mr. John Wilson—I mean John Smart?

A. It would be John Smart or someone working for him.

Q. Or someone that reported to him? Do you recall any specific instances of such contacts reported to you?

A. No, I don't recall any.

Q. Do you recall any specific individuals whom Mr. Smart or any other person in the pricing department mentioned that they were contacting at Squibb?

A. No.

Q. Do you recall what types of contacts Mr. Smart or the pricing department were making with Squibb?

A. Similar to the ones I was making.

Q. Can you tell me, Mr. Wilson, whether or not you were [121] ever contacted by any individual of the Squibb Company on any matter relating to the business of Pfizer or its competitors?

A. I would say yes.

Q. All right. Tell me, sir, who would have contacted you from the Squibb Company?

A. The same people that I was contacting.

Q. All right. And what types of contacts would these have been, sir?

A. Generally of the same nature.

Q. Telephone communications?

A. Yes.

Q. And the subject matter generally was price confirmation or free goods confirmation, that sort of thing?

A. Right.

Q. Is that correct?

A. Yes.

Q. Would you tell me, Mr. Wilson, whether or not it was ever reported to you that other members of the Pfizer Pricing Department had been contacted by Squibb personnel on matters relating to Pfizer's business or that of its competitors?

A. I can't recall specifically, but no doubt it was true.

Q. You have no specific recollection of that?

[122] A. No.

Q. In all of these questions pertaining to contacts with the Squibb organization, Mr. Wilson, were these on matters related to broad spectrum antibiotic products?

Mr. Boyden: You mean exclusively?

The Witness: No.

By Mr. Greenan:

Q. Were some of them on matters relating to broad spectrum antibiotic products?

A. Yes.

Q. Do you have any way of telling me what percentage of the inquiries to which you have referred related to broad spectrum antibiotic products?

A. I would say more than half.

Q. More than half. Did you ever have any contacts with Mr. Herb Wolfe at Squibb?

A. Yes.

Q. What types of contacts did you have with that gentleman?

A. Completely unrelated to the contacts with the other type of individuals. He handled sales to U.S. export trade, which was the department that also reported to me. Still

Exhibit 9

does. And interpretation of ICA, and eventually AID regulations was a common source of confusion in the industry, and I think most of my contact was in this area.

[123] Q. When you say "sales to U. S. export trade," Mr. Wilson, I wonder if you could be a little more specific on that? What did you mean by that?

A. Well, we have sales in International which are handled through a separate department in New York, and it was two broad major groups. One group is companies representatives and brokers who are domiciled in the United States and have special arrangements with firms overseas. This could be oil companies, United Fruit, it could be a New York representative of a larger firm overseas who insisted on dealing or purchasing—make that purchasing—through their New York representative. The second part of this group was sales that we made on a direct basis from New York to markets overseas where we did not have the equivalent local representation. This generally was for chemicals, agricultural products, specialized items and also for small markets where Pfizer had very little representation.

Q. All of these sales were subject to U. S. Export Regulations, and quite a number of them were financed by U. S. grants or loans made to foreign governments. This in turn required certification by the U. S. company or the exporter, as to the validity of the rules, competitiveness of the price and whether or not we had or were getting lower prices or special concessions to other classes of trade. This required quite a bit of legal interpretation and the maintenance of

• • •

[141] A. If he did, I don't recall it.

Exhibit 9

Q. I see. Now, sir, you also mentioned this morning that you had some discussion with personnel of the Bristol organization.

A. That's right.

Q. I wonder if you could identify for me, sir, the individuals connected with the Bristol organization with whom you had these contacts?

A. I cannot recall the individual. It was very limited, because Bristol was not a significant factor in the International markets, and we were only interested in the major competitors in the market, and this regarded activities of the lesser competitors.

Q. Do you recall whether or not the contacts—well, those contacts which were made with the Bristol organization were what type of contacts, Mr. Wilson?

A. Similar to that with the others, but for a limited number of markets where Bristol was a factor.

Q. Do you recall whether or not these were telephonic contacts?

A. Yes. All telephonic.

Q. And were these contacts for the purpose of verifying information or reports that you had received from the field concerning Bristol activity?

A. That's correct.

EXHIBIT 10

Deposition of Edmond T. Pratt, Jr.

[94] to maintain the patent. And so I recall generally that subject coming up from time to time, but I don't remember any specifics about it.

Q. Do you recall any occasion in or about 1966 or '67 or '68 in which Pfizer management exchanged views with Cyanamid management with respect to which patent should be maintained in certain foreign markets?

A. No, I really don't.

Q. You didn't participate in any such discussions?

A. No, I don't recall any such discussions.

Q. Do you recall participating in any such discussions relating to broad spectrum patent maintenance between Pfizer and Bristol?

A. No.

Q. In how many countries today does Pfizer have pending legal action relating to broad spectrum antibiotic patents, to the best of your recollection?

A. I wouldn't know a number. I would say it's a significant number.

(The following proceedings were had on the confidential record.)

• • •

[97] By Mr. Rigler:

Q. With respect to the significant number of pending legal actions relating to broad spectrum antibiotics, would this include actions relating to oxytetracycline, tetracycline and doxycycline?

A. Yes.

Q. There is no area in which you have given up then?

A. I don't think so. I think we still have—it is my recollection that we still have some pending actions in all three.

Exhibit 10

Mr. Rigler: I have no further questions.

Mr. von Kalonowski: We have none, so I take it the deposition is adjourned.

Mr. Rigler: Yes.

Mr. von Kalonowski: Concluded.

Mr. Rigler: I suppose it comes into the thirty-day rule in case any of the other plaintiffs counsel feel that I have neglected their interest.

Mr. von Kalonowski: Whatever the thirty-day rule says, it says, and I won't speculate on it.

Mr. Rigler: At any rate, I don't intend to ask Mr. Pratt anymore questions.

(Whereupon the deposition was concluded.)

• • •

EXHIBIT 11

MEMORANDUM

BRISTOL

From: E. E. Enriquez DATE August 24, 1964
To: W. J. Hemphill SUBJECT Competition—TETREX

Separately, we are sending you a bottle containing 100 capsules of TETRACAPS (tetracycline HCL) 250 mg. The label indicating the contents were supplied by Lucas Pharmaceutical of Toronto, Canada. We understand it is locally distributed by TRO Enterprises. TRO stands for Teofilo R. Ongkingko, a former PD detailman. It appears Mr. Lucas is also a former PD executive who now operates his own company.

Vic Montenegro, Sales Manager of PD, informs me that they have sued Lucas Pharmaceutical for distributing Chloro-Syrup in the Philippines and they have won their suit. However, TRO, after promising not to distribute Chloro-Syrup anymore, keeps on distributing more of the same.

TETRACAPS is carried by 2 big wholesalers in Manila, Commander Drug and Salud Drug, who sell the bottle of 100s at ₱30.00 each.

TRO's 3 detailmen sell direct to dispensing physicians at ₱35.00 per bottle and the physician sells to the patient at ₱0.45 to ₱0.50 per capsule.

We received a note from Sherm transmitting an inquiry from Dr. Julio Alzona of Lucena City, Philippines, regarding the availability of 5,000 pes. of Tetrex Capsules. Our Southern Tagalog representative vised Dr. Alzona to stock him with Tetrex. However, Dr. Alzona had some 40 bottles of TETRACAPS 100s. He is not buying Tetrex as long as he has TETRACAPS in stock and, according to him, the price of TETRACAPS is low enough to offset any

Exhibit 11

clinical advantage tetracycline complex phosphate may have over tetracycine HCL.

Our representative visted 10 dispensing physicians in the general area and they were all heavily stocked with TETRACAPS.

It appears that our only market for Tetrex in the Southern Tagalog area will be with the prescribing doctors. Neither can we sell Tetrex Syrup to dispensing physicians as Lucas detailmen are supplying these physicians with Chloro-Syrup at ₱60.00 per 40 oz. bottle, or ₱3.00 per 2 oz. bottle; we retail TPC at ₱7.60. Other areas have not reported of the presence of TETRACAPS in their market.

Please refer to my memo of April 20th re: Competition informing you of the impending entry into the market of Unimycin (tetracycline HCL) to be distributed by Unitex Laboratories. Jim Penrose, local Manager of Upjohn, called me up one day and I informed him that I saw stacks and stacks of Unimycin cartons in our printer's warehouse.

I understand that Jim Penrose called up Pfizer's General Manager, Herb Duncan to appraise the latter of Unimycin's impending entry into the market. I was later informed that Herb talked with United Laboratories and prevailed on the latter to desist from selling Unimycin in the Philippine market.

This morning, I called up Jim Penrose and gave him the news on TETRACAPS with the unveiled hint that Herb will probably be interested in going after Lucas Pharmaceutical. Jim, who learned about TETRACAPS only now, promised he will inform Herb Duncan.

We hope Pfizer will pick up our chestnut from the fire—afterall, they hold the Philippine patent on tetracycline hydrochloride.

E. E. ENRIQUEZ

EEE: tc

EXHIBIT 12

MEMORANDUM

BRISTOL LABORATORIES INTERNATIONAL CORPORATION

FROM S. H. Stearns — DATE January 17, 1968

To W. J. Hemphill — SUBJECT Bulk Prices—Philippines

C.C. T. E. Abrams
B. A. Barth
BLISA
D. M. Higgins
E. J. LeMoal
F. W. Teltscher
R. S. Wolff

The Price Committee has reviewed the contents of E. E. Enriquez' memorandum to you of January 10 concerning the prices for bulk TC and has approved of the following prices as requested by him:

List No.	Description	FOB Panama
41890	Tetracycline HC1	US$ 127.00/kgW
43210	Tetracycline Phosphate Complex	127.00/kgW

We would like to repeat, however, that we trust that B. L. Philippines will have no difficulties with Customs when importing at this higher price as mentioned in our memorandum to you of December 4, 1967.

Best regards,

S. H. Stearns

SHS/sl

EXHIBIT 13

RETYPED FOR LEGIBILITY PURPOSES

MEMORANDUM

No.: 250- -NY — July 7, 1959

To: Pricing Division—New York

FROM: Mr. L. E. Armerding O Manila

SUBJECT: Prices

As you know, Squibb agreed sometime ago to cease selling Mysteclin V capsules in bottles of 500 except to a very limited number of hospitals. Although this was not a satisfactory arrangement, we felt that it was a decided improvement on their previous policies and we were willing to tolerate this situation during a reasonable period of readjustment.

However, it has come to our attention that Squibb is not fulfilling their promise in this respect and we feel that, under the circumstances, we are justified in instituting sales of our broad spectrum capsules at prices competitive with theirs. Therefore, unless we receive your express instructions to the contrary, we propose to offer multiple packs of our broad spectrums 250 mg capsules, 5 bottles of 100, at the same prices as Squibb is selling them to an equivalent number of hospitals beginning July 16. According to information received from the local Squibb manager, this includes 16 hospitals in the Manila area and 104 hospitals in the provinces.

[This] is in no sense to be construed as a price cut and in view of the fact that Squibb has been consistently under-

Exhibit 13

selling us for a good many months, we feel that there can be no valid objection to our meeting their prices in those areas where they are already offering these cut prices to their customers. Although we expect to offer it only to hospitals, we have reliable information from 4 different retailmen on our staff that Squibb is also making these sales to leading wholesalers, as well as to the principal hospitals. Furthermore, it seems unreasonable for them to claim that these are just the leading hospitals since statistics indicate that there are only about 300 hospitals in the Philippines altogether which would indicate that they are giving those prices to approximately ⅓ of all hospital customers.

L. E. Armerding

cc: BAHQ Hongkong
Reading
Chrono
Subject

EXHIBIT 14

Retyped for Legibility Purposes

MEMORANDUM

July 23, 1959

To: New York Pricing Division

From: Mr. L. E. Armerding—Manila

Subject: Price Situation

We have good news with respect to the bottles of 500 Mysteclin V. Squibb has finally agreed to limit their sale to just 13 hospitals in Manila, none in the provinces, and no commercial or industrial customers anywhere. This represents only about 10% of the customers served with this size in the past. In view of this favorable trend, we will not introduce the 500's ourselves since we desperately want to keep our prices as high as possible.

On the other hand, it is apparent that United and Lepetit are not being as cooperative as we had hoped. We know that Lederle has threatened to sue United for patent infringement and, as is typical of the Chinese, it may be that they are liquidating stocks prior to withdrawing from the market as they did when Hoechst threatened them with a suit on their Teralin. In any case, they are selling bottles of capsules to some customers as low as less 20% (list is P. 5.25) and there are outlets selling **to the at per capsule. There is a flood of** sample material circulating commercially as low as P 40.00 per 100 to the wholesaler. This is on sale to drugstores at P 60.00 per hundred.

Exhibit 14

It would be helpful if you could tell us how much Lepetit agreed to bill United on bulk tetracycline and also any idea as to how much they had actually shipped them. Can you get this information for us?

In general, the price situation is very confused. Just this morning we heard that the present administration plans to allow prices to rise about as much as would occur under devaluation, then clamp down hard on prices and devalue the peso. This scheme has merit and would not be at all surprising. In this case, it would be to our advantage to take every possible step to raise rather than lower our prices, and we will be exploring this angle carefully over the next few days.

L. E. ARMERDING

cc: Hongkong

EXHIBIT 15

[Letterhead of Kirkland, Ellis, Hodson, Chaffetz & Masters]

April 22, 1971

Honorable Miles W. Lord
Judge, United States District Court
District of Minnesota
Federal Courthouse
4th and Marquette
Minneapolis, Minnesota 55401

Re: *Republic of Vietnam* v. *Pfizer, et al.*
and *State of Kuwait* v. *Pfizer, et al.*

Dear Judge Lord:

On behalf of defendants, I would like to respond briefly to Mr. Paul Owens' letter to you of April 18 referring to the United States Government's amicus position in the Kuwait and Vietnam cases that foreign governments are "persons" within the meaning of Section 4 of the Clayton Act.

While it may be correct that the Republic of India was a named plaintiff in several electrical equipment treble damage cases, it certainly is not clear that the issue of the Republic's own standing to sue was presented to the Court in Philadelphia in 1963 or that the judges there decided that issue. It definitely cannot be said, on the basis of the transcript and order provided by Mr. Owens or on the basis of any information we have, that "the question as to whether a foreign government has standing to maintain a treble damage action was squarely presented" and that denial of defendants' motions there "necessarily involved a holding" that foreign governments are "persons," as Mr. Owens argues.

Exhibit 15

Counsel for both sides in those cases, and indeed Judge Joseph Lord himself, all stated the issue as involving the standing of a government corporation organized under Indian law. (Tr. 143-45, 155, 157). Moreover, the Order of June 21, 1963 is not explicit.

On that record, defendants urge that this Court cannot find precedential support for the position of Kuwait and Vietnam. It seems to us that a decision as important as this—whether foreign governments may maintain treble damage actions—and with such far-reaching implications must be based on firmer ground. The Antitrust Division more appropriately should address its argument to the Congress. Thus we renew our request that defendants' motions to dismiss these two cases be granted for the reasons stated in our briefs and oral argument.

If the Court is not so inclined, defendants are prepared to resume argument, at the Court's convenience, on the remoteness questions presented in their motion to dismiss the Vietnam case.

Yours very respectfully,

JOHN H. MORRISON

JHM: gb
cc: John T. McDermott, Esq.
Perry Goldberg, Esq.
Robert W. Thabit, Esq.
Counsel for all defendants
Paul A. Owens, Esq.

EXHIBIT 16

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

RWMcL:LB:PAO
60-21-139

April 18, 1971

Honorable Miles W. Lord
United States District Court
Minneapolis, Minnesota 55401

Re: *The Republic of Viet-Nam* v. *Chas. Pfizer, et al.* (70 Civ. 877) and *The State of Kuwait, et al.* v. *Chas. Pfizer, et al.* (69 Civ. 4091)—S.D.N.Y.

Dear Judge Lord:

On March 16, 1971 the United States filed a brief as *amicus curiae* in the above captioned cases in support of the position that foreign governments are "persons" within the meaning of Section 4 of the Clayton Act entitled to maintain treble damage actions.

During the course of my oral argument on this issue at the hearing on March 16, 1971, the question arose (Tr. pp. 205-8) as to whether the courts have ever previously ruled upon this question and, more specifically, whether in the electrical equipment cases the Government of India had been held to be a person entitled to maintain a treble damage action for damages sustained on its purchases of electrical equipment. I advised the court that I had been informed that the standing of the Government of India and certain of its instrumentalities to maintain such suits had been upheld in an unreported decision (Tr. 204-206). This representation was challenged by Mr. Morrison who presented the oral argument on behalf of the defendants.

I have made a further inquiry into this subject and have learned that there were some nine treble damage actions filed in the Eastern District of Pennsylvania based on purchases of electrical equipment.* The plaintiffs in various of these actions were the Government of India, the Damodar Valley Corporation (a wholly owned Government corporation similar to our TVA created by act of the Indian Parliament), and certain government owned public utilities of the States of India such as the Mysore State Electricity Board, the Rajasthan Madras State Electricity Board and the Punjab State Electricity Board. The court records disclose that the Republic of India itself, as distinguished from its instrumentalities, was a named plaintiff in at least five of these actions, *viz.*, Civil Action No. 30965, 30967, 30971, 30973 and 30974.

Motions to dismiss certain of these actions were filed on the ground that the Indian Government and its various intrumentalities were not persons entitled to maintain treble damage actions. The issue was argued before Chief Judge Thomas J. Clary and Judge Joseph S. Lord, III, on June 18, 1963. I have obtained and am enclosing a copy of the transcript of the oral argument held on this issue.

I think it is clear from the transcript that the question as to whether a foreign government has standing to maintain a treble damage action was squarely presented.

On June 21, 1963 Chief Judge Clary and Judge Lord entered an order denying the defendants' motion to dismiss the complaints on this and other grounds. The denial of

* The reason for the fact that there were nine different cases appears to be that the complaints sought to track the several criminal indictments, each of which was directed at a price fixing conspiracy affecting different kinds of electrical equipment such as turbine generators, power capacitors, industrial control equipment, etc.

these motions to dismiss necessarily involved a holding that the Republic of India and its instrumentalities were persons within the meaning of Section 4 of the Clayton Act entitled to maintain a treble damage action. Set out below is the text of the court's order entered in Civil Actions 30965-974 as it appears in the court records.

> And now, to wit, this 21st day of June 1963, upon consideration of the various motions of defendants to strike the allegations from the complaints in the above captioned actions, to dismiss some of the complaints in the above captioned actions, and for more definite statements in some of the above captioned actions,
> It is hereby ordered and decreed that all of the defendants' motions to strike, to dismiss and for more definite statements directed to the above captioned complaints are hereby denied. Defendants shall have thirty (30) days from the entry of this order to answer the complaints, except that the anwers to Civil Action No. 30974 may be deferred pending amendment by plaintiffs to allege which count or counts the purchases belong.
>
> /s/ Thomas J. Clary, C.J.
> /s/ Joseph S. Lord, III

Since the text of the statute makes it undisputably clear that foreign corporations have a right to maintain treble damage actions, I argued that it would frustrate the clearly evident Congressional intent to deny a foreign government the right to maintain an action for damages on the purely technical ground that it made its purchases directly in its own name and not through a wholly owned government corporation.

Exhibit 16

The Congressional purpose to enhance the effectiveness of the antitrust laws by authorizing private treble damage actions to supplement federal government enforcement efforts must be given judicial effect if it is clearly discernible behind the specific manifestation in the text of the statute. This is precisely what was done in *Georgia* v. *Evans*, 312 U.S. 159 (1942) where the Supreme Court recognized the right of the state to maintain a treble damage action even though states were not specifically enumerated in the definition of "person" as set out in the statute.

Similarly, the Congressional purpose should be effectuated by recognizing the standing of foreign governments to maintain treble damage actions. Where the basic policy of the statute is so plain it would be a misfortune if a narrow or grudging process of construction were to confine the effect of the statute to the particular cases to which Congress adverted so as to thwart the Congressional purpose and to discriminate against injured parties whose equity is indistinguishable.

Sincerely yours,

RICHARD W. MCLAREN
Assistant Attorney General
Antitrust Division

By: /s/ PAUL A. OWENS
Paul A. Owens
Attorney, Department of Justice

Enclosure

cc.: All defense counsel of record
Counsel for The Republic of Viet-Nam
Counsel for the State of Kuwait
John McDermott, Esq.
Judicial Panel on Multidistrict Litigation